

(2) the audio and video signals broadcast over the Internet can be of sufficient quality so that members of the public watching the broadcast of the meeting can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

(b) The Department of Information Resources shall report its findings to the legislature not later than September 1, 2000.

SECTION 4. This Act takes effect September 1, 1999.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 7, 1999, by a viva-voce vote; passed the House on May 3, 1999, by a non-record vote.

Approved May 17, 1999.

Effective September 1, 1999.

## CHAPTER 101

### S.B. No. 1467

#### AN ACT

relating to a nonsubstantive revision of statutes relating to the Texas Department of Insurance, the business of insurance, and certain related businesses, including conforming amendments, repeals, and penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. ADOPTION OF TITLE. The Insurance Code is amended by adding Title 2 to read as follows:

#### **TITLE 2. TEXAS DEPARTMENT OF INSURANCE**

#### **SUBTITLE A. ADMINISTRATION OF THE TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 30. GENERAL PROVISIONS**

#### **CHAPTER 31. ORGANIZATION OF DEPARTMENT**

#### **CHAPTER 32. ADMINISTRATIVE POWERS AND DUTIES**

#### **CHAPTER 33. STANDARDS OF CONDUCT**

#### **CHAPTER 34. IMMUNITY FROM LIABILITY**

*[Chapter 35 reserved for expansion]*

#### **CHAPTER 36. DEPARTMENT RULES AND PROCEDURES**

#### **CHAPTER 37. RATEMAKING AND POLICY FORM PROCEEDINGS**

#### **CHAPTER 38. DATA COLLECTION AND REPORTS**

#### **CHAPTER 39. PUBLIC ACCESS**

#### **CHAPTER 40. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS AND COMMISSIONER IN CERTAIN PROCEEDINGS; RATE SETTING PROCEEDINGS**

*[Chapters 41 to 80 reserved for expansion]*

#### **SUBTITLE B. DISCIPLINE AND ENFORCEMENT**

CHAPTER 81. GENERAL PROVISIONS REGARDING  
DISCIPLINE AND ENFORCEMENT

CHAPTER 82. SANCTIONS

CHAPTER 83. EMERGENCY CEASE AND DESIST ORDERS

CHAPTER 84. ADMINISTRATIVE PENALTIES

CHAPTER 85. GENERAL CRIMINAL ENFORCEMENT

*[Chapters 86 to 100 reserved for expansion]*

CHAPTER 101. UNAUTHORIZED INSURANCE

CHAPTER 102. CHARITABLE GIFT ANNUITIES

TITLE 2. TEXAS DEPARTMENT OF INSURANCE

SUBTITLE A. ADMINISTRATION OF THE TEXAS  
DEPARTMENT OF INSURANCE

CHAPTER 30. GENERAL PROVISIONS

Sec. 30.001. PURPOSE OF TITLE

Sec. 30.002. CONSTRUCTION OF TITLE

Sec. 30.003. REFERENCE IN LAW TO STATUTE REVISED BY TITLE

CHAPTER 30. GENERAL PROVISIONS

Sec. 30.001. *PURPOSE OF TITLE.* (a) *This title is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.*

(b) *Consistent with the objectives of the statutory revision program, the purpose of this title is to make the law encompassed by this title more accessible and understandable by:*

- (1) rearranging the statutes into a more logical order;*
- (2) employing a formal and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;*
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and*
- (4) restating the law in modern American English to the greatest extent possible.*  
*(New.)*

Sec. 30.002. *CONSTRUCTION OF TITLE.* *Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this title except as otherwise expressly provided by this title. (New.)*

Sec. 30.003. *REFERENCE IN LAW TO STATUTE REVISED BY TITLE.* *A reference in a law to a statute or a part of a statute revised by this title is considered to be a reference to the part of this title that revises that statute or part of that statute. (New.)*

CHAPTER 31. ORGANIZATION OF DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. DEFINITIONS

Sec. 31.002. DUTIES OF DEPARTMENT

*Sec. 31.003. COMPOSITION OF DEPARTMENT*

*Sec. 31.004. SUNSET PROVISION*

*Sec. 31.005. DEFENSE BY ATTORNEY GENERAL*

*Sec. 31.006. TEXAS WORKERS' COMPENSATION COMMISSION NOT AFFECTED*

*Sec. 31.007. REFERENCES TO BOARD*

*[Sections 31.008 to 31.020 reserved for expansion]*

**SUBCHAPTER B. COMMISSIONER OF INSURANCE**

*Sec. 31.021. CHIEF EXECUTIVE*

*Sec. 31.022. APPOINTMENT; TERM*

*Sec. 31.023. QUALIFICATIONS*

*Sec. 31.024. INELIGIBILITY FOR PUBLIC OFFICE*

*Sec. 31.025. BOND*

*Sec. 31.026. COMPENSATION*

*Sec. 31.027. GROUNDS FOR REMOVAL*

*[Sections 31.028 to 31.040 reserved for expansion]*

**SUBCHAPTER C. PERSONNEL**

*Sec. 31.041. DEPARTMENT PERSONNEL*

*Sec. 31.042. DIVISION OF RESPONSIBILITIES*

*Sec. 31.043. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT*

*Sec. 31.044. QUALIFICATIONS AND STANDARDS OF CONDUCT*

*Sec. 31.045. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS*

**CHAPTER 31. ORGANIZATION OF DEPARTMENT**

**SUBCHAPTER A. GENERAL PROVISIONS**

*Sec. 31.001. DEFINITIONS. In this code and other insurance laws:*

*(1) "Commissioner" means the commissioner of insurance.*

*(2) "Department" means the Texas Department of Insurance. (V.T.I.C. Art. 1.01A, Subsec. (a).)*

*Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the other duties required of the Texas Department of Insurance, the department shall:*

*(1) regulate the business of insurance in this state; and*

*(2) ensure that this code and other laws regarding insurance and insurance companies are executed. (V.T.I.C. Art. 1.01A, Subsec. (b) (part); Art. 1.10, Sec. 1.)*

*Sec. 31.003. COMPOSITION OF DEPARTMENT. The department is composed of the commissioner and other officers and employees required to efficiently implement:*

*(1) this code;*

*(2) other insurance laws of this state; and*

*(3) other laws granting jurisdiction or applicable to the department or the commissioner. (V.T.I.C. Art. 1.01A, Subsec. (b) (part).)*

*Sec. 31.004. SUNSET PROVISION. The Texas Department of Insurance is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as*

provided by that chapter, the department is abolished September 1, 2005. (V.T.I.C. Art. 1.02, Subsec. (c).)

**Sec. §1.005. DEFENSE BY ATTORNEY GENERAL.** The attorney general shall defend an action brought against the commissioner or an employee or officer of the department as a result of that person's official act or omission, whether or not at the time of the institution of the action that person has terminated service with the department. (V.T.I.C. Art. 1.40, Subsec. (a) (part).)

**Sec. §1.006. TEXAS WORKERS' COMPENSATION COMMISSION NOT AFFECTED.** This code does not affect the duties imposed by law on the Texas Workers' Compensation Commission. (V.T.I.C. Art. 1.07.)

**Sec. §1.007. REFERENCES TO BOARD.** A reference in this code or other law to the State Board of Insurance, the Board of Insurance Commissioners, or an individual commissioner means the commissioner or the department as consistent with the respective duties of the commissioner and the department under this code and other insurance laws. (V.T.I.C. Art. 1.01A, Subsec. (c); Art. 1.02, Subsec. (a) (part).)

[Sections §1.008 to §1.020 reserved for expansion]

## SUBCHAPTER B. COMMISSIONER OF INSURANCE

**Sec. §1.021. CHIEF EXECUTIVE.** (a) The commissioner is the department's chief executive and administrative officer. The commissioner shall administer and enforce this code, other insurance laws of this state, and other laws granting jurisdiction or applicable to the department or the commissioner.

(b) The commissioner has the powers and duties vested in the department by this code and other insurance laws of this state. (V.T.I.C. Art. 1.02, Subsec. (b) (part); Art. 1.09, Subsec. (a) (part).)

**Sec. §1.022. APPOINTMENT; TERM.** (a) The governor, with the advice and consent of the senate, shall appoint the commissioner. The commissioner serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the commissioner without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. (V.T.I.C. Art. 1.09, Subsec. (b) (part).)

**Sec. §1.023. QUALIFICATIONS.** The commissioner must:

- (1) be a competent and experienced administrator;
- (2) be well informed and qualified in the field of insurance and insurance regulation; and
- (3) have at least 10 years of experience as an executive in the administration of business or government or as a practicing attorney or certified public accountant, with at least five years of that experience in the field of insurance or insurance regulation. (V.T.I.C. Art. 1.09, Subsec. (b) (part).)

**Sec. §1.024. INELIGIBILITY FOR PUBLIC OFFICE.** The commissioner is ineligible to be a candidate for a public elective office in this state, unless the commissioner has resigned and the governor has accepted the resignation. (V.T.I.C. Art. 1.09-2.)

**Sec. §1.025. BOND.** Before taking office, the commissioner must execute with a surety company licensed to do business in this state a bond for \$50,000 payable to this state and conditioned on the faithful discharge of the commissioner's duties. (V.T.I.C. Art. 1.09, Subsec. (c).)

**Sec. §1.026. COMPENSATION.** The commissioner is entitled to compensation as provided by the General Appropriations Act. (V.T.I.C. Art. 1.09, Subsec. (d).)

**Sec. §1.027. GROUNDS FOR REMOVAL.** (a) It is a ground for removal from office if the commissioner:

- (1) does not have at the time of appointment the qualifications required by Section §1.023;

(2) does not maintain during service as commissioner the qualifications required by Section 31.023;

(3) violates a prohibition established by Sections 33.001, 33.003, 33.004, or 33.005; or

(4) cannot, because of illness or disability, discharge the commissioner's duties for a substantial part of the commissioner's term.

(b) The validity of an action of the commissioner or the department is not affected by the fact that it is taken when a ground for removal of the commissioner exists. (V.T.I.C. Art. 1.09, Subsecs. (i), (j).)

[Sections 31.028 to 31.040 reserved for expansion]

#### SUBCHAPTER C. PERSONNEL

Sec. 31.041. **DEPARTMENT PERSONNEL.** (a) Subject to the General Appropriations Act or other law, the commissioner shall appoint deputies, assistants, and other personnel as necessary to carry out the powers and duties of the commissioner and the department under this code, other insurance laws of this state, and other laws granting jurisdiction or applicable to the department or the commissioner.

(b) A person appointed under this section must have the professional, administrative, and insurance experience necessary to qualify the person for the position to which the person is appointed.

(c) A person appointed as an associate or deputy commissioner or to hold an equivalent position must have at least five years of the experience required for appointment as commissioner under Section 31.023. At least two years of that experience must be in work related to the position to be held. (V.T.I.C. Art. 1.09, Subsec. (f).)

Sec. 31.042. **DIVISION OF RESPONSIBILITIES.** The commissioner shall develop and implement policies that clearly define the respective responsibilities of the commissioner and the staff of the department. (V.T.I.C. Art. 1.02, Subsec. (g).)

Sec. 31.043. **EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.** (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the department workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under this section must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature. (V.T.I.C. Art. 1.02, Subsecs. (d), (e), (f).)

Sec. 31.044. **QUALIFICATIONS AND STANDARDS OF CONDUCT.** The commissioner shall provide to department employees, as often as necessary, information regarding their:

- (1) qualification for office or employment under this code; and
- (2) responsibilities under applicable laws relating to standards of conduct for state employees. (V.T.I.C. Art. 1.02, Subsec. (h).)

**Sec. 31.045. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.** (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this subsection. (V.T.I.C. Art. 1.09, Subsecs. (g), (h).)

## CHAPTER 32. ADMINISTRATIVE POWERS AND DUTIES

### SUBCHAPTER A. RECORDS

#### Sec. 32.001. GIVING CERTIFIED COPIES AND CERTIFICATES

#### Sec. 32.002. RECORD OF DEPARTMENT PROCEEDINGS

#### Sec. 32.003. STATEMENTS REGARDING CONDITION OF EXAMINED COMPANIES

[Sections 32.004 to 32.020 reserved for expansion]

### SUBCHAPTER B. REPORTS

#### Sec. 32.021. ANNUAL REPORTS

#### Sec. 32.022. BIENNIAL REPORT TO LEGISLATURE

#### Sec. 32.023. REPORTS TO OTHER STATES

[Sections 32.024 to 32.040 reserved for expansion]

### SUBCHAPTER C. FORMS

#### Sec. 32.041. FORMS

## CHAPTER 32. ADMINISTRATIVE POWERS AND DUTIES

### SUBCHAPTER A. RECORDS Revised Law

**Sec. 32.001. GIVING CERTIFIED COPIES AND CERTIFICATES.** (a) On request and on payment of the required fee, the department shall:

- (1) certify a copy of a paper or a record in a department office and give the certified copy to any person when the commissioner determines that providing the copy is not prejudicial to the public interest; and
- (2) give a certificate as provided by other law.

(b) A fee collected by the department under this section shall be deposited in the general revenue fund to the credit of the Texas Department of Insurance operating account. (V.T.I.C. Art. 1.10, Sec. 11.)

**Sec. 32.002. RECORD OF DEPARTMENT PROCEEDINGS.** The department shall maintain a complete record of the department's proceedings. (V.T.I.C. Art. 1.10, Sec. 10 (part).)

**Sec. 32.003. STATEMENTS REGARDING CONDITION OF EXAMINED COMPANIES.** The department shall maintain a concise statement of the condition of each company or agency visited or examined. (V.T.I.C. Art. 1.10, Sec. 10 (part).)

[Sections 32.004 to 32.020 reserved for expansion]

## SUBCHAPTER B. REPORTS

**Sec. 32.021. ANNUAL REPORTS.** (a) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report that includes:

- (1) an accounting of all funds received and disbursed by the department during the preceding fiscal year;
- (2) a description of the commissioner's official acts;
- (3) a description of the condition of companies doing business in this state; and
- (4) other information that exhibits the affairs of the department.

(b) The annual report required by Subsection (a) must be in the form and reported in the time provided by the General Appropriations Act.

(c) The department shall:

- (1) send a copy of the annual report required by Subsection (a) to the insurance commissioner or other similar officer of every state; and
- (2) on request, send a copy to any company doing business in this state.

(d) The department shall print a separate premium and loss report that contains and arranges in tabular form the premium and loss information contained in the annual statements for companies doing business in this state.

(e) The department shall file the report required by Subsection (d) with the Legislative Reference Library and the Texas State Library with the annual report required by Subsection (a).

(f) The department shall notify the legislature of the availability of the reports required by this section. (V.T.I.C. Art. 1.10, Secs. 12, 13; Art. 1.25, Subsec. (b).)

**Sec. 32.022. BIENNIAL REPORT TO LEGISLATURE.** (a) On or before December 31 of each even-numbered year, the department shall submit to the appropriate committees of each house of the legislature a written report that indicates any needed changes in the laws relating to regulation of the insurance industry or any other industry or occupation under the jurisdiction of the department and that states the reasons for the needed changes.

(b) If the commissioner determines that any capital or surplus requirements established by this code for any insurance companies are inadequate, the department shall:

- (1) include in the biennial report specific recommendations relating to the amounts at which the capital or surplus requirements should be set and the findings and evidence on which those recommendations are based; and
- (2) submit the biennial report to the governor. (V.T.I.C. Art. 1.25, Subsec. (a); Art. 1.25A.)

**Sec. 32.023. REPORTS TO OTHER STATES.** On request, the department shall provide to the insurance commissioner or other similar officer of another state information relating to a company of this state that does business in the other state if:

- (1) the other state has enacted the substantial provisions of the insurance laws of this state; and
- (2) the commissioner or other similar officer has a legal duty to obtain the information. (V.T.I.C. Art. 1.10, Sec. 14.)

[Sections 32.024 to 32.040 reserved for expansion]

## SUBCHAPTER C. FORMS

**Sec. 32.041. FORMS.** The department shall furnish to the companies required to report to the department the necessary forms for the required statements. (V.T.I.C. Art. 1.10, Sec. 9.)

## CHAPTER 33. STANDARDS OF CONDUCT

## Sec. 33.001. APPLICATION OF LAW RELATING TO ETHICAL CONDUCT

*Sec. 33.002. INSURANCE BUSINESS INTEREST; SERVICE AS COMMISSIONER**Sec. 33.003. INSURANCE BUSINESS INTEREST; EMPLOYEE**Sec. 33.004. TRADE ASSOCIATIONS**Sec. 33.005. LOBBYING ACTIVITIES**Sec. 33.006. FORMER SERVICE**Sec. 33.007. PROHIBITED REPRESENTATION***CHAPTER 33. STANDARDS OF CONDUCT**

*Sec. 33.001. APPLICATION OF LAW RELATING TO ETHICAL CONDUCT.* The commissioner and each employee or agent of the department is subject to the code of ethics and the standard of conduct imposed by Chapter 572, Government Code, and any other law regulating the ethical conduct of state officers and employees. (V.T.I.C. Art. 1.09–3.)

*Sec. 33.002. INSURANCE BUSINESS INTEREST; SERVICE AS COMMISSIONER.* (a) A person is not eligible for appointment as commissioner if the person, the person's spouse, or any other person who resides in the same household as the person:

- (1) is registered, certified, or licensed by the department;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law.

(b) A person is not eligible for appointment as commissioner if the person:

- (1) is a stockholder, director, officer, attorney, agent, or employee of an insurance company, insurance agent, insurance broker, or insurance adjuster; or
- (2) is directly or indirectly interested in a business described by Subdivision (1).

(c) Subsection (b) does not apply to:

- (1) a person solely because the person is insured by an insurer or is the beneficiary of insurance; or
- (2) a person who:
  - (A) is appointed as a receiver, liquidator, supervisor, or conservator of an insurer; or
  - (B) is an employee of a receiver, liquidator, supervisor, or conservator of an insurer with respect to duties under that employment. (V.T.I.C. Art. 1.06, Subsec. (a); Art. 1.09, Subsec. (b) (part).)

*Sec. 33.003. INSURANCE BUSINESS INTEREST; EMPLOYEE.* (a) A person who is a director, officer, attorney, agent, or employee of an insurance company, insurance agent, insurance broker, or insurance adjuster may not be employed by the department.

(b) A person who resides in the same household as a person who is an officer, managerial employee, or paid consultant in the insurance industry may not be employed in an exempt salary position as defined by the General Appropriations Act. (V.T.I.C. Art. 1.06, Subsec. (b); Art. 1.06AA.)

*Sec. 33.004. TRADE ASSOCIATIONS.* (a) A person who is an officer, employee, or paid consultant of a trade association in the field of insurance may not be:

- (1) the commissioner; or
  - (2) an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.
- (b) A person who is the spouse of an officer, manager, or paid consultant of a trade association in the field of insurance may not be:



(1) the commissioner; or

(2) an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. (V.T.I.C. Art. 1.06A.)

**Sec. 33.005. LOBBYING ACTIVITIES.** A person may not serve as the commissioner or act as the general counsel to the commissioner if the person is required to register as a lobbyist under Chapter 905, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department. (V.T.I.C. Art. 1.06B.)

**Sec. 33.006. FORMER SERVICE.** A person may not serve as the commissioner if the person served as a member of the State Board of Insurance. (V.T.I.C. Art. 1.09, Subsec. (b) (part).)

**Sec. 33.007. PROHIBITED REPRESENTATION.** (a) A person who served as the commissioner, the general counsel to the commissioner, or the public insurance counsel, or as an employee of the State Office of Administrative Hearings who was involved in hearing cases under this code or another insurance law of this state, commits an offense if the person represents another person in a matter before the department or receives compensation for services performed on behalf of another person regarding a matter pending before the department during the one-year period after the date the person ceased to be the commissioner, the general counsel to the commissioner, the public insurance counsel, or an employee of the State Office of Administrative Hearings.

(b) A person who served as a member of the State Board of Insurance or as a staff employee of a member of the State Board of Insurance, or who served as the commissioner, the general counsel to the commissioner, or the public insurance counsel or as an employee of the department or the State Office of Administrative Hearings, commits an offense if, after the person ceased to serve, the person represents another person or receives compensation for services performed on behalf of another person regarding a matter with which the person was directly concerned during the person's service. For purposes of this subsection, a person was directly concerned with a matter if the person had personal involvement with the matter or if the matter was within the scope of the person's official responsibility.

(c) An offense under this section is a Class A misdemeanor.

(d) This section does not apply to a department employee whose position is eliminated as a direct result of a reduction in the department's workforce. (V.T.I.C. Art. 1.06C.)

#### CHAPTER 34. IMMUNITY FROM LIABILITY

##### Sec. 34.001. PERSONAL IMMUNITY

##### Sec. 34.002. IMMUNITY FOR FURNISHING INFORMATION RELATING TO FRAUD

##### Sec. 34.003. IMMUNITY FOR INVESTIGATIONS AND RELATED REPORTS

##### Sec. 34.004. IMMUNITY FOR USE OF ANNUAL STATEMENT INFORMATION

##### Sec. 34.005. EFFECT OF CHAPTER ON OTHER IMMUNITY

#### CHAPTER 34. IMMUNITY FROM LIABILITY

**Sec. 34.001. PERSONAL IMMUNITY.** A person who is the commissioner or an employee of the department is not personally liable in a civil action for:

(1) an act performed in good faith within the scope of that person's authority; or

(2) damages caused by an official act or omission of that person unless the act or omission is corrupt or malicious. (V.T.I.C. Art. 1.40, Subsec. (a) (part).)

**Sec. 34.002. IMMUNITY FOR FURNISHING INFORMATION RELATING TO FRAUD.** (a) A person is not liable in a civil action, including an action for libel or slander, and a civil action may not be brought against the person, for furnishing information relating to suspected, anticipated, or completed fraudulent insurance acts if the information is provided to or received from:

- (1) the commissioner or an employee of the department;
  - (2) a law enforcement agency of this state, of another state, or of the United States or an employee of the agency;
  - (3) the National Association of Insurance Commissioners or an employee of the association; or
  - (4) a state or federal governmental agency established to detect and prevent fraudulent insurance acts or to regulate the business of insurance or an employee of the agency.
- (b) A person may furnish information as described in Subsection (a) orally or in writing, including through publishing, disseminating, or filing bulletins or reports.
- (c) Subsection (a) does not apply to a person who acts with malice, fraudulent intent, or bad faith.

(d) A person to whom Subsection (a) applies who prevails in a civil action arising from the furnishing of information as described in Subsection (a) is entitled to attorney's fees and costs if the action was not substantially justified. In this subsection, "substantially justified" means there was a reasonable basis in law or fact to bring the action at the time the action was initiated. (V.T.I.C. Art. 1.40, Subsecs. (b), (c), (d).)

**Sec. 34.003. IMMUNITY FOR INVESTIGATIONS AND RELATED REPORTS.** (a) A person who is the commissioner or an employee, agent, or designee of the department is not liable in a civil action, including an action for libel or slander, because of:

- (1) an investigation of a violation of this code or an alleged fraudulent insurance act; or
  - (2) the publication or dissemination of an official report related to the investigation.
- (b) Subsection (a) does not apply to a person who acts with malice. (V.T.I.C. Art. 1.40, Subsec. (f).)

**Sec. 34.004. IMMUNITY FOR USE OF ANNUAL STATEMENT INFORMATION.** (a) A person is not liable in a civil action, including an action for libel or slander, for collecting, reviewing, analyzing, disseminating, or reporting information collected from annual statements filed under Article 1.11 if the person is:

- (1) the department, the commissioner, or an employee of the department;
  - (2) a member or employee of or delegate to the National Association of Insurance Commissioners or an authorized committee, subcommittee, or task force of that association; or
  - (3) another person who is responsible for collecting, reviewing, analyzing, and disseminating information from filed annual statement convention blanks.
- (b) Subsection (a) does not apply to a person who acts with malice. (V.T.I.C. Art. 1.40, Subsec. (e).)

**Sec. 34.005. EFFECT OF CHAPTER ON OTHER IMMUNITY.** This chapter does not affect or modify any common law or statutory privilege or immunity. (V.T.I.C. Art. 1.40, Subsec. (g).)

[Chapter 35 reserved for expansion]

## CHAPTER 36. DEPARTMENT RULES AND PROCEDURES

### SUBCHAPTER A. RULES

#### Sec. 36.001. RULES FOR GENERAL AND UNIFORM APPLICATION

#### Sec. 36.002. FISCAL IMPACT OF DEPARTMENT RULES

#### Sec. 36.003. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING

*Sec. 36.004. COMPLIANCE WITH NATIONAL ASSOCIATION  
OF INSURANCE COMMISSIONERS REQUIREMENTS*

*[Sections 36.005 to 36.100 reserved for expansion]*

*SUBCHAPTER B. DEPARTMENT PROCEDURES*

*Sec. 36.101. APPLICABILITY OF CERTAIN LAWS*

*Sec. 36.102. SUMMARY PROCEDURES FOR ROUTINE MATTERS*

*Sec. 36.103. REVIEW OF ACTION ON ROUTINE MATTER*

*Sec. 36.104. INFORMAL DISPOSITION OF CONTESTED CASE*

*Sec. 36.105. NEWSPAPER PUBLICATION*

*Sec. 36.106. WAIVER OF CERTAIN NOTICE REQUIREMENTS*

*Sec. 36.107. ACCEPTANCE OF ACTUARIAL OPINION*

*[Sections 36.108 to 36.150 reserved for expansion]*

*SUBCHAPTER C. GENERAL SUBPOENA POWERS;  
WITNESSES AND PRODUCTION OF RECORDS*

*Sec. 36.151. DEFINITION*

*Sec. 36.152. SUBPOENA AUTHORITY*

*Sec. 36.153. SERVICE OF SUBPOENA*

*Sec. 36.154. ENFORCEMENT OF SUBPOENA*

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*CHAPTER 36. DEPARTMENT RULES AND PROCEDURES*

*SUBCHAPTER A. RULES*

*Sec. 36.001. RULES FOR GENERAL AND UNIFORM APPLICATION. (a) The commissioner may adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.*

(b) Rules adopted under this section must have general and uniform application.

(c) The commissioner shall publish the rules in a format organized by subject matter. The published rules shall be kept current and be available in a form convenient to any interested person. (V.T.I.C. Art. 1.03A.)

**Sec. 36.002. FISCAL IMPACT OF DEPARTMENT RULES.** (a) A rule adopted by the commissioner under Chapter 2001, Government Code, is void if:

(1) the fiscal note or the public benefit-cost note required by Section 2001.024, Government Code, does not accurately state the reasonable actual costs required; and

(2) the reasonable actual costs required exceed the stated costs by at least 25 percent.

(b) A rule that is void under this section is void beginning on the date the rule is adopted. (V.T.I.C. Art. 1.03B.)

**Sec. 36.003. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.** The commissioner may not adopt rules restricting advertising or competitive bidding by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person. (V.T.I.C. Art. 21.20-1.)

**Sec. 36.004. COMPLIANCE WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS REQUIREMENTS.** The department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute and approved by the commissioner. (V.T.I.C. Art. 1.27.)

[Sections 36.005 to 36.100 reserved for expansion]

#### SUBCHAPTER B. DEPARTMENT PROCEDURES

**Sec. 36.101. APPLICABILITY OF CERTAIN LAWS.** Except as specifically provided by law, the department is subject to Chapters 2001 and 2002, Government Code. (V.T.I.C. Art. 1.33A (part).)

**Sec. 36.102. SUMMARY PROCEDURES FOR ROUTINE MATTERS.** (a) The commissioner by rule may:

(1) create a summary procedure for routine matters; and

(2) designate department activities that otherwise would be subject to Chapter 2001, Government Code, as routine matters to be handled under the summary procedure.

(b) An activity may be designated as a routine matter only if the activity is:

(1) voluminous;

(2) repetitive;

(3) believed to be noncontroversial; and

(4) of limited interest to anyone other than persons immediately involved in or affected by the proposed department action.

(c) The rules may establish procedures different from those contained in Chapter 2001, Government Code. The procedures must require, for each party directly involved, notice of a proposed negative action not later than the fifth day before the date the action is proposed to be taken.

(d) The rules may provide for the delegation of authority to take action on a routine matter to a salaried employee of the department designated by the commissioner. (V.T.I.C. Art. 1.33, Subsecs. (a), (b), (c).)

**Sec. 36.103. REVIEW OF ACTION ON ROUTINE MATTER.** (a) A person directly or indirectly affected by an action of the commissioner or the department on a routine matter taken under the summary procedure adopted under Section 36.102 is entitled to a review of the action under Chapter 2001, Government Code.

(b) The person must apply to the commissioner not later than the 60th day after the date of the action to be entitled to the review.

(c) *The timely filing of the application for review immediately stays the action pending a hearing on the merits.*

(d) *The commissioner may adopt rules relating to an application for review under this section and consideration of the application. (V.T.I.C. Art. 1.33, Subsec. (d).)*

**Sec. 36.104. INFORMAL DISPOSITION OF CONTESTED CASE.** *The commissioner may, on written agreement or stipulation of each party and any intervenor, informally dispose of a contested case in accordance with Section 2001.056, Government Code, notwithstanding any provision of this code that requires a hearing before the commissioner. (V.T.I.C. Art. 1.33, Subsec. (e) (part).)*

**Sec. 36.105. NEWSPAPER PUBLICATION.** *Except as otherwise provided by law, a notice or other matter that this code requires to be published must be published for three successive weeks in two newspapers that:*

(1) *are printed in this state; and*

(2) *have a general circulation in this state. (V.T.I.C. Art. 21.30.)*

**Sec. 36.106. WAIVER OF CERTAIN NOTICE REQUIREMENTS.** *The commissioner may, on written agreement or stipulation of each party and any intervenor, waive or modify the notice publication requirement of Article 2.01, 2.03, 3.04, or 22.03. (V.T.I.C. Art. 1.33, Subsec. (e) (part).)*

**Sec. 36.107. ACCEPTANCE OF ACTUARIAL OPINION.** *An opinion of an actuary requested by the commissioner under this code, another insurance law of this state, or a rule of the commissioner is presumed to be accurate and valid, and the department shall accept the opinion unless controverted. The department may employ, at the department's expense, another actuary to provide an alternative opinion. (V.T.I.C. Art. 1.11A.)*

*[Sections 36.108 to 36.150 reserved for expansion]*

#### **SUBCHAPTER C. GENERAL SUBPOENA POWERS; WITNESSES AND PRODUCTION OF RECORDS**

**Sec. 36.151. DEFINITION.** *In this subchapter, "records" includes books, accounts, documents, papers, correspondence, and other material. (V.T.I.C. Art. 1.19–1, Secs. 1(a) (part), (e) (part), 2 (part), 3 (part), 5(a) (part); New.)*

**Sec. 36.152. SUBPOENA AUTHORITY.** (a) *With respect to a matter that the commissioner has authority to consider or investigate, the commissioner may issue a subpoena applicable throughout the state that requires:*

(1) *the attendance and testimony of a witness; and*

(2) *the production of records.*

(b) *In connection with a subpoena, the commissioner may require attendance and production of records before the commissioner or the commissioner's designee:*

(1) *at the department's offices in Austin; or*

(2) *at another place designated by the commissioner.*

(c) *In connection with a subpoena, the commissioner or the commissioner's designee may administer an oath, examine a witness, or receive evidence.*

(d) *Subject to Section 36.102(d), the commissioner must personally sign and issue the subpoena. (V.T.I.C. Art. 1.19–1, Sec. 1(a) (part).)*

**Sec. 36.153. SERVICE OF SUBPOENA.** (a) *A subpoena issued by the commissioner may be served, at the discretion of the commissioner, by the commissioner, an authorized agent of the commissioner, a sheriff, or a constable.*

(b) *The sheriff's or constable's fee for serving the subpoena is the same as the fee paid to the sheriff or constable for similar services. (V.T.I.C. Art. 1.19–1, Sec. 4(b).)*

**Sec. 36.154. ENFORCEMENT OF SUBPOENA.** (a) *On application of the commissioner in the case of disobedience of a subpoena or the contumacy of a person, a district court*

may issue an order requiring a person subpoenaed to obey the subpoena, to give evidence, or to produce records if the person has refused to do so.

(b) A court may punish as contempt the failure to obey a court order under Subsection (a).

(c) If the court orders compliance with the subpoena or finds the person in contempt for failure to obey the order, the commissioner, or the attorney general when representing the department, may recover reasonable costs and fees, including attorney's fees and investigative costs incurred in the proceedings.

(d) An application under Subsection (a) must be made in a district court in Travis County or in the county in which the subpoena is served. (V.T.I.C. Art. 1.19-1, Sec. 3 (part).)

**Sec. §6.155. COMPENSATION FOR ATTENDANCE.** A person required by subpoena to attend a proceeding before the commissioner or the commissioner's designee is entitled to:

(1) reimbursement for mileage in the same amount for each mile as the mileage travel allowance for a state employee for traveling to or from the place where the person's attendance is required, if the place is more than 25 miles from the person's place of residence; and

(2) a fee for each day or part of a day the person is required to be present as a witness that is equal to the greater of:

(A) \$10; or

(B) a state employee's per diem travel allowance. (V.T.I.C. Art. 1.19-1, Sec. 4(a).)

**Sec. §6.156. OUT-OF-STATE MATERIALS.** (a) A person with materials located outside this state that are requested by the commissioner may make the materials available for examination at the place where the materials are located.

(b) The commissioner may designate a representative, including an official of the state in which the materials are located, to examine the materials.

(c) The commissioner may respond to a similar request from an official of another state or of the United States. (V.T.I.C. Art. 1.19-1, Sec. 1(b).)

**Sec. §6.157. USE AS EVIDENCE IN CERTAIN CASES.** (a) This section applies to testimony or records resulting in a case involving an allegation of engaging in the business of insurance without a license.

(b) On certification by the commissioner under official seal, testimony taken or records produced under this subchapter and held by the department are admissible in evidence in a case without:

(1) prior proof of correctness; and

(2) proof, other than the certificate of the commissioner, that the testimony or records were received from the person testifying or producing the records.

(c) The certified records, or certified copies of the records, are prima facie evidence of the facts disclosed by the records.

(d) This section does not limit any other provision of this subchapter or any law that makes provision for the admission or evidentiary value of certain evidence. (V.T.I.C. Art. 1.19-1, Sec. 2 (part).)

**Sec. §6.158. ACCESS TO INFORMATION.** (a) A record or other evidence acquired under a subpoena under this subchapter is not a public record for the period the commissioner considers reasonably necessary to:

(1) complete the investigation;

(2) protect the person being investigated from unwarranted injury; or

(3) serve the public interest.

(b) The record or other evidence is not subject to a subpoena, other than a grand jury subpoena, until:

(1) the record or other evidence is released for public inspection by the commissioner; or

(2) after notice and a hearing, a district court determines that obeying the subpoena would not jeopardize the public interest and any investigation by the commissioner.

(c) Except for good cause, a district court order under Subsection (b) may not apply to:

(1) a record or communication received from another law enforcement or regulatory agency; or

(2) the internal notes, memoranda, reports, or communications made in connection with a matter that the commissioner has the authority to consider or investigate. (V.T.I.C. Art. 1.19–1, Sec. 1(d).)

**Sec. §6.159. PRIVILEGED AND CONFIDENTIAL RECORDS AND INFORMATION; PROTECTIVE ORDERS.** (a) A record subpoenaed and produced under this subchapter that is otherwise privileged or confidential by law remains privileged or confidential until admitted into evidence in an administrative hearing or a court.

(b) The commissioner may issue a protective order relating to the confidentiality or privilege of a record described by Subsection (a) to restrict the use or distribution of the record:

(1) by a person; or

(2) in a proceeding other than a proceeding before the commissioner.

(c) Specific information relating to a particular policy or claim is privileged and confidential while in the possession of an insurance company, organization, association, or other entity holding a certificate of authority from the department and may not be disclosed by the entity to another person, except as specifically provided by law. (V.T.I.C. Art. 1.19–1, Secs. 5(a) (part), (b).)

**Sec. §6.160. COOPERATION WITH LAW ENFORCEMENT.** On request, the commissioner may furnish records or other evidence obtained by subpoena to:

(1) a law enforcement agency of this state, another state, or the United States; or

(2) a prosecuting attorney of a municipality, county, or judicial district of this state, another state, or the United States. (V.T.I.C. Art. 1.19–1, Sec. 1(e) (part).)

**Sec. §6.161. CERTAIN SUBPOENAS ISSUED TO FINANCIAL INSTITUTIONS.** A subpoena issued to a bank or other financial institution as part of a criminal investigation is not subject to Section §0.007, Civil Practice and Remedies Code. (V.T.I.C. Art. 1.19–1, Sec. 1(c).)

**Sec. §6.162. EFFECT ON CONTESTED CASE.** Sections §6.152, §6.156, §6.158, §6.160, and §6.161 do not affect the conduct of a contested case under Chapter 2001, Government Code. (V.T.I.C. Art. 1.19–1, Sec. 1(g).)

[Sections §6.163 to §6.200 reserved for expansion]

#### SUBCHAPTER D. JUDICIAL REVIEW

**Sec. §6.201. ACTION SUBJECT TO JUDICIAL REVIEW.** An action of the commissioner subject to judicial review under this subchapter includes a decision, order, rate, rule, form, or administrative or other ruling of the commissioner. (V.T.I.C. Art. 1.04, Subsec. (a) (part).)

**Sec. §6.202. PETITION FOR JUDICIAL REVIEW.** (a) After failing to get relief from the commissioner, any insurance company or other party at interest who is dissatisfied with an action of the commissioner may file a petition for judicial review against the commissioner as defendant.

(b) The petition must state the particular objection to the action and may be filed only in a district court in Travis County. (V.T.I.C. Art. 1.04, Subsec. (a) (part).)

**Sec. §6.203. JUDICIAL REVIEW.** Judicial review of the action is under the substantial evidence rule and shall be conducted under Chapter 2001, Government Code. (V.T.I.C. Art. 1.04, Subsec. (a) (part).)

**Sec. §6.204. ACTION NOT VACATED.** (a) The filing of a petition for judicial review of an action under this subchapter does not vacate the action.

(b) After notice and hearing, the court may vacate the action if the court finds it would serve the interest of justice to do so. (V.T.I.C. Art. 1.04, Subsec. (a) (part).)

**Sec. 36.205. APPEAL.** (a) A party to the action under Section 36.202 may appeal to an appellate court that has jurisdiction, and the appeal is at once returnable to that court.

(b) An appeal under this section has precedence in the appellate court over any cause of a different character pending in the court.

(c) The commissioner is not required to give an appeal bond in an appeal arising under this subchapter. (V.T.I.C. Art. 1.04, Subsecs. (a) (part), (b).)

## **CHAPTER 37. RATEMAKING AND POLICY FORM PROCEEDINGS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 37.001. CERTAIN PROCEEDINGS RELATING TO RATEMAKING AND POLICY FORMS; RULES**

[Sections 37.002 to 37.050 reserved for expansion]

### **SUBCHAPTER B. CERTAIN PROCEEDINGS RELATING TO RATES**

#### **Sec. 37.051. STREAMLINED PROCEDURES**

#### **Sec. 37.052. ROLE OF DEPARTMENT**

## **CHAPTER 37. RATEMAKING AND POLICY FORM PROCEEDINGS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 37.001. CERTAIN PROCEEDINGS RELATING TO RATEMAKING AND POLICY FORMS; RULES.** (a) The commissioner shall adopt rules governing proceedings necessary to approve or promulgate rates, policy forms, or policy form endorsements under this code or another insurance law of this state.

(b) The commissioner shall conduct the proceedings in accordance with the rules adopted under this section.

(c) Rules adopted under this section must comply with this code and any other insurance law of this state and must be adopted in accordance with Chapter 2001, Government Code. (V.T.I.C. Art. 1.33C, Subsecs. (a), (b).)

[Sections 37.002 to 37.050 reserved for expansion]

### **SUBCHAPTER B. CERTAIN PROCEEDINGS RELATING TO RATES**

**Sec. 37.051. STREAMLINED PROCEDURES.** (a) The department shall study and the commissioner may adopt and implement procedures for streamlining insurance rate proceedings under this code or another insurance law of this state. The procedures must ensure due process to each affected party.

(b) The commissioner shall consider this section in adopting rules under Section 37.001. (V.T.I.C. Art. 1.33C, Subsec. (c); Art. 5.121.)

**Sec. 37.052. ROLE OF DEPARTMENT.** (a) The application of this section is subject to Chapter 40.

(b) The commissioner may designate the general counsel or an assistant general counsel to serve as a hearings officer in a proceeding in which insurance rates are set or in a prehearing proceeding. The commissioner must make the final decision relating to the rates to be set.

(c) The department shall provide evidence in proceedings before the commissioner or the designated hearings officer that promotes the adoption of fair and reasonable rates for underserved areas to promote access to full insurance coverage for those areas.



*(d) The department may appear as a matter of right as a party, present evidence, or question a witness in a proceeding before the commissioner or the designated hearings officer in which insurance rates are set under this code. This subsection expires September 1, 2001. (V.T.I.C. Art. 1.09–5.)*

**CHAPTER 38. DATA COLLECTION AND REPORTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 38.001. INQUIRIES**

**Sec. 38.002. UNDERWRITING GUIDELINES; CONFIDENTIALITY**

*[Sections 38.003 to 38.050 reserved for expansion]*

**SUBCHAPTER B. HEALTH BENEFIT PLAN PROVIDER REPORTING**

**Sec. 38.051. DEFINITION**

**Sec. 38.052. REQUIRED INFORMATION; RULES**

*[Sections 38.053 to 38.100 reserved for expansion]*

**SUBCHAPTER C. DATA COLLECTION AND REPORTING  
RELATING TO HIV AND AIDS**

**Sec. 38.101. DEFINITIONS**

**Sec. 38.102. PURPOSE**

**Sec. 38.103. DATA COLLECTION PROGRAM**

**Sec. 38.104. COMPILATION OF DATA AND INFORMATION; REPORT**

**Sec. 38.105. RECOMMENDATIONS AND REPORTS TO LEGISLATURE**

**Sec. 38.106. INFORMATION CONFIDENTIAL**

*[Sections 38.107 to 38.150 reserved for expansion]*

**SUBCHAPTER D. LIABILITY INSURANCE CLOSED CLAIM REPORTS**

**Sec. 38.151. DEFINITIONS**

**Sec. 38.152. EXEMPTION**

**Sec. 38.153. CLOSED CLAIM REPORT**

**Sec. 38.154. CONTENT OF CLOSED CLAIM REPORT FORM**

**Sec. 38.155. SUMMARY CLOSED CLAIM REPORT**

**Sec. 38.156. CONTENT OF SUMMARY CLOSED CLAIM REPORT FORM**

**Sec. 38.157. AGGREGATE REPORT**

**Sec. 38.158. ALTERNATIVE REPORTING**

**Sec. 38.159. COMPILATION OF DATA; REPORT**

**Sec. 38.160. ELECTRONIC DATABASE**

**Sec. 38.161. REPORT TO LEGISLATURE**

**Sec. 38.162. INFORMATION CONFIDENTIAL**

**Sec. 38.163. RULES AND FORMS**

*[Sections 38.164 to 38.200 reserved for expansion]*

**SUBCHAPTER E. STATISTICAL DATA COLLECTION**

*Sec. 38.201. DEFINITION**Sec. 38.202. STATISTICAL AGENT**Sec. 38.203. QUALIFICATIONS OF STATISTICAL AGENT**Sec. 38.204. POWERS AND DUTIES OF STATISTICAL AGENT**Sec. 38.205. DUTY OF INSURER**Sec. 38.206. FEES**Sec. 38.207. RULES***CHAPTER 38. DATA COLLECTION AND REPORTS****SUBCHAPTER A. GENERAL PROVISIONS**

*Sec. 38.001. INQUIRIES.* (a) In this section, "authorization" means a permit, certificate of registration, or other authorization issued or existing under this code.

(b) The department may address a reasonable inquiry to an insurance company, agent, or holder of an authorization relating to:

(1) the person's business condition; or

(2) any matter connected with the person's transactions that the department considers necessary for the public good or for the proper discharge of the department's duties.

(c) A person receiving an inquiry under Subsection (b) shall respond to the inquiry in writing not later than the 10th day after the date the inquiry is received.

(d) A response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. (V.T.I.C. Art. 1.24.)

*Sec. 38.002. UNDERWRITING GUIDELINES; CONFIDENTIALITY.* (a) The department or the office of public insurance counsel may obtain a copy of an insurer's underwriting guidelines.

(b) Underwriting guidelines are confidential, and the department or the office of public insurance counsel may not make the guidelines available to the public.

(c) The department or the office of public insurance counsel may disclose to the public a summary of an insurer's underwriting guidelines in a manner that does not directly or indirectly identify the insurer.

(d) When underwriting guidelines are furnished to the department or the office of public insurance counsel, only a person within the department or the office of public insurance counsel with a need to know may have access to the guidelines. The department and the office of public insurance counsel shall establish internal control systems to limit access to the guidelines and shall keep records of the access provided.

(e) This section does not preclude the use of underwriting guidelines as evidence in prosecuting a violation of this code. Each copy of an insurer's underwriting guidelines that is used in prosecuting a violation is presumed to be confidential and is subject to a protective order until all appeals of the case have been exhausted. If an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the underwriting guidelines used as evidence of the violation is no longer presumed to be confidential.

(f) A violation of this section is a violation of Chapter 552, Government Code. (V.T.I.C. Art. 1.24D.)

[Sections 38.003 to 38.050 reserved for expansion]

**SUBCHAPTER B. HEALTH BENEFIT PLAN PROVIDER REPORTING**

*Sec. 38.051. DEFINITION.* In this subchapter, "health benefit plan provider" means an insurance company, group hospital service corporation, or health maintenance organization that issues:

(1) *an individual, group, blanket, or franchise insurance policy, an insurance agreement, a group hospital service contract, or an evidence of coverage, that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness; or*

(2) *a long-term care insurance policy, as defined by Section 2, Article 3.70-12. (V.T.I.C. Art. 3.90, Subsec. (a); New.)*

**Sec. 38.052. REQUIRED INFORMATION; RULES.** (a) *A health benefit plan provider shall submit information required by the department relating to the health benefit plan provider's:*

(1) *loss experience;*

(2) *overhead; and*

(3) *operating expenses.*

(b) *The department may also request information about characteristics of persons covered by a health benefit plan provider, including information relating to:*

(1) *age;*

(2) *gender;*

(3) *health status;*

(4) *job classification; and*

(5) *geographic distribution.*

(c) *A health benefit plan provider may not be required to submit information under this section more frequently than annually.*

(d) *The commissioner shall adopt rules governing the submission of information under this subchapter. (V.T.I.C. Art. 3.90, Subsecs. (b), (c).)*

*[Sections 38.053 to 38.100 reserved for expansion]*

#### **SUBCHAPTER C. DATA COLLECTION AND REPORTING RELATING TO HIV AND AIDS**

**Sec. 38.101. DEFINITIONS.** *In this subchapter:*

(1) *"HIV" and "AIDS" have the meanings assigned by Section 81.101, Health and Safety Code.*

(2) *"Health benefit plan coverage" means a group policy, contract, or certificate of health insurance or benefits delivered, issued for delivery, or renewed in this state by:*

(A) *an insurance company subject to Chapter 3;*

(B) *a group hospital service corporation under Chapter 20;*

(C) *a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code); or*

(D) *a self-insurance trust or mechanism providing health care benefits. (V.T.I.C. Art. 1.24C, Subsecs. (b)(1), (2).)*

**Sec. 38.102. PURPOSE.** *The purpose of this subchapter is to:*

(1) *ensure that adequate health insurance and benefits coverage is available to the citizens of this state;*

(2) *ensure that adequate health care is available to protect the public health and safety; and*

(3) *ascertain the continuing effect of HIV and AIDS on health insurance coverage and health benefits coverage availability and adequacy in this state for purposes of meeting the public's health coverage needs. (V.T.I.C. Art. 1.24C, Subsec. (a).)*

**Sec. 38.103. DATA COLLECTION PROGRAM.** (a) *The department shall maintain a program to gather data and information relating to the effect of HIV and AIDS on the availability, adequacy, and affordability of health benefit plan coverage in this state.*

(b) *The commissioner may adopt rules necessary to implement this subchapter, including rules relating to:*

- (1) *reporting schedules;*
- (2) *report forms;*
- (3) *lists of data and information required to be reported; and*
- (4) *reporting procedures, guidelines, and criteria. (V.T.I.C. Art. 1.24C, Subsecs. (c), (d).)*

**Sec. 38.104. COMPILATION OF DATA AND INFORMATION; REPORT.** (a) *The department shall compile the data and information included in reports required by this subchapter into composite form and shall prepare at least annually a written report of:*

- (1) *the composite data and information; and*
- (2) *the department's analysis of the availability, adequacy, and affordability of health benefit plan coverage in this state.*

(b) *Subject to Section 38.106, the department shall make the report available to the public and may charge a reasonable fee for the report to cover the cost of making the report available. (V.T.I.C. Art. 1.24C, Subsec. (e).)*

**Sec. 38.105. RECOMMENDATIONS AND REPORTS TO LEGISLATURE.** (a) *The commissioner may submit to the legislature written recommendations for legislation the commissioner considers necessary to resolve problems related to the effect of HIV and AIDS on the availability, adequacy, and affordability of health benefit plan coverage in this state.*

(b) *The department, on request of the lieutenant governor, the speaker of the house of representatives, or the presiding officer of a legislative committee, shall provide to the legislature additional composite data and information and analyses based on the reports required by this subchapter. Reports prepared under this subsection shall be available to the public as required by Section 38.104. (V.T.I.C. Art. 1.24C, Subsecs. (f), (g).)*

**Sec. 38.106. INFORMATION CONFIDENTIAL.** (a) *If the commissioner determines that information or reports submitted under this subchapter would reveal or might reveal the identity of an individual or associate an individual with a company, the commissioner shall declare the information or reports confidential, and the information or reports may not be made available to the public.*

(b) *Information made confidential under this section may be examined only by the commissioner and department employees.*

(c) *Data and information reported by an insurer under this subchapter are not subject to public disclosure to the extent that the information is protected under Chapter 552, Government Code. The data and information may be compiled into composite form and made public if information that could be used to identify the reporting insurer is removed. (V.T.I.C. Art. 1.24C, Subsecs. (h), (i).)*

*[Sections 38.107 to 38.150 reserved for expansion]*

#### **SUBCHAPTER D. LIABILITY INSURANCE CLOSED CLAIM REPORTS**

**Sec. 38.151. DEFINITIONS.** *In this subchapter:*

(1) *"Insurer" means:*

(A) *an insurance company or other entity that is admitted to do business and authorized to write liability insurance in this state, including:*

- (i) *a county mutual insurance company;*
- (ii) *a Lloyd's plan insurer; and*
- (iii) *a reciprocal or interinsurance exchange; and*

(B) *a pool, joint underwriting association, or self-insurance mechanism or trust authorized by law to insure its participants, subscribers, or members against liability.*

(2) *"Liability insurance" means:*

- (A) *general liability insurance;*
- (B) *medical professional liability insurance;*
- (C) *professional liability insurance other than medical professional liability insurance;*
- (D) *commercial automobile liability insurance;*
- (E) *the liability portion of commercial multiperil insurance coverage; and*
- (F) *any other type or line of liability insurance designated by the commissioner under Section 38.163. (V.T.I.C. Art. 1.24B, Secs. 1(1), (2) (part).)*

**Sec. 38.152. EXEMPTION.** *This subchapter does not apply to a farm mutual insurance company or to a county mutual fire insurance company writing exclusively industrial fire insurance as described by Article 17.02. (V.T.I.C. Art. 1.24B, Sec. 1(2) (part).)*

**Sec. 38.153. CLOSED CLAIM REPORT.** (a) *Not later than the 10th day after the last day of the calendar quarter in which a claim for recovery under a liability insurance policy is closed, the insurer shall file with the department a closed claim report if the indemnity payment for bodily injury under the coverage is \$25,000 or more.*

(b) *A closed claim report must be filed in a form prescribed by the commissioner. (V.T.I.C. Art. 1.24B, Secs. 2(a), 5(a) (part).)*

**Sec. 38.154. CONTENT OF CLOSED CLAIM REPORT FORM.** (a) *The closed claim report form adopted by the commissioner for a report under Section 38.153 must require information relating to:*

- (1) *the identity of the insurer;*
- (2) *the liability insurance policy, including:*
  - (A) *the type or types of insurance;*
  - (B) *the policy limits;*
  - (C) *whether the policy was an occurrence or claim-made policy;*
  - (D) *the classification of the insured; and*
  - (E) *reserves for the claim;*
- (3) *details of:*
  - (A) *any injury, damage, or other loss that was the subject of the claim, including:*
    - (i) *the type of injury, damage, or other loss;*
    - (ii) *where and how the injury, damage, or other loss occurred;*
    - (iii) *the age of any injured party; and*
    - (iv) *whether an injury was work-related;*
  - (B) *the claims process, including:*
    - (i) *whether a lawsuit was filed;*
    - (ii) *where a lawsuit, if any, was filed;*
    - (iii) *whether attorneys were involved;*
    - (iv) *the stage at which the claim was closed;*
    - (v) *any court verdict;*
    - (vi) *any appeal;*
    - (vii) *the number of defendants; and*
    - (viii) *whether the claim was settled outside of court and, if so, at what stage; and*
  - (C) *the amount paid on the claim, including:*
    - (i) *the total amount of a court award;*
    - (ii) *the amount paid by the insurer;*
    - (iii) *any amount paid by another insurer;*
    - (iv) *any amount paid by another defendant;*
    - (v) *any collateral source of payment;*

- (vi) any structured settlement;
- (vii) the amount of noneconomic compensatory damages;
- (viii) the amount of prejudgment interest;
- (ix) the amount paid for defense costs;
- (x) the amount paid for punitive damages; and
- (xi) the amount of allocated loss adjustment expenses; and

(4) any other information that the commissioner determines to be significant in allowing the department and the legislature to monitor the liability insurance industry to ensure its solvency and to ensure that liability insurance is available, is affordable, and provides adequate protection in this state.

(b) The department may require an insurer to include in a closed claim report information relating to payment made for property damage and other damage on the claim under the coverage. (V.T.I.C. Art. 1.24B, Secs. 2(b), 3.)

**Sec. 38.155. SUMMARY CLOSED CLAIM REPORT.** (a) An insurer shall file with the department a summary closed claim report for a claim for recovery under a liability insurance policy if the indemnity payment for bodily injury under the coverage is less than \$25,000 but more than \$10,000.

(b) A summary closed claim report must be filed, in a form prescribed by the commissioner, not later than the 10th day after the last day of the calendar quarter in which the claim is closed. (V.T.I.C. Art. 1.24B, Secs. 2(c), 5(a) (part).)

**Sec. 38.156. CONTENT OF SUMMARY CLOSED CLAIM REPORT FORM.** The summary closed claim report form adopted by the commissioner for a report under Section 38.155 must require information relating to:

- (1) the identity of the insurer;
- (2) the liability insurance policy, including:
  - (A) the type or types of insurance;
  - (B) the classification of the insured; and
  - (C) reserves for the claim;
- (3) details of:
  - (A) the claims process, including:
    - (i) whether a lawsuit was filed;
    - (ii) whether attorneys were involved;
    - (iii) the stage at which the claim was closed;
    - (iv) any court verdict;
    - (v) any appeal; and
    - (vi) whether the claim was settled outside of court and, if so, at what stage; and
  - (B) the amount paid on the claim, including:
    - (i) the total amount of a court award;
    - (ii) the amount paid to the claimant by the insurer;
    - (iii) the amount paid for defense costs;
    - (iv) the amount paid for punitive damages; and
    - (v) the amount of loss adjustment expenses; and

(4) any other matter that the commissioner determines to be significant in allowing the department and the legislature to monitor the liability insurance industry to ensure its solvency and to ensure that liability insurance is available, is affordable, and provides adequate protection in this state. (V.T.I.C. Art. 1.24B, Sec. 4.)

**Sec. 38.157. AGGREGATE REPORT.** (a) An insurer shall file with the department one report containing the information required under this section for all claims closed within the calendar year for which the indemnity payments for bodily injury under the coverage are \$10,000 or less, including claims for which an indemnity payment is not made on closing.

(b) *The report must include, in summary form, at least the following information:*

- (1) *the aggregate number of claims; and*
- (2) *the aggregate dollar amount paid out.*

(c) *The report must be filed in a form and in a manner prescribed by the commissioner. (V.T.I.C. Art. 1.24B, Sec. 2(d).)*

**Sec. 38.158. ALTERNATIVE REPORTING.** *After notice and public hearing, the commissioner may provide for alternative reporting in the form of sampling of the required closed claim data instead of requiring insurers to file the closed claim data required by this subchapter. (V.T.I.C. Art. 1.24B, Sec. 5(b).)*

**Sec. 38.159. COMPILATION OF DATA; REPORT.** *The department shall compile the data included in individual closed claim reports and summary closed claim reports into a composite form and shall prepare annually a written report of the composite data. The department shall make the report available to the public. (V.T.I.C. Art. 1.24B, Secs. 6(a), (b) (part).)*

**Sec. 38.160. ELECTRONIC DATABASE.** *The commissioner may:*

- (1) *establish an electronic database composed of reports filed with the department under this subchapter;*
- (2) *provide the public with access to that data;*
- (3) *establish a system to provide access to that data by electronic data transmittal processes; and*
- (4) *set and charge a fee for electronic access to the database in an amount reasonable and necessary to cover the costs of access. (V.T.I.C. Art. 1.24B, Sec. 6(d).)*

**Sec. 38.161. REPORT TO LEGISLATURE.** (a) *The department shall submit copies of the report required by Section 38.159 to the presiding officers of each house of the legislature.*

(b) *The department, on request of the lieutenant governor, the speaker of the house of representatives, or the presiding officer of a legislative committee, shall provide to the legislature additional composite data based on closed claim reports and summary closed claim reports. Reports prepared under this subsection shall be available to the public. (V.T.I.C. Art. 1.24B, Secs. 6(b) (part), (c).)*

**Sec. 38.162. INFORMATION CONFIDENTIAL.** (a) *Information included in an individual closed claim report or an individual summary closed claim report submitted by an insurer under this subchapter is confidential and may not be made available by the department to the public.*

(b) *Information included in an individual closed claim report or an individual summary closed claim report may be examined only by the commissioner and department employees. (V.T.I.C. Art. 1.24B, Sec. 7.)*

**Sec. 38.163. RULES AND FORMS.** *The commissioner may adopt necessary rules to:*

- (1) *implement this subchapter;*
- (2) *define terminology, criteria, content, and other matters relating to the reports required under this subchapter; and*
- (3) *designate other types or lines of liability insurance required to provide information under this subchapter. (V.T.I.C. Art. 1.24B, Sec. 5(a) (part).)*

*[Sections 38.164 to 38.200 reserved for expansion]*

#### **SUBCHAPTER E. STATISTICAL DATA COLLECTION**

**Sec. 38.201. DEFINITION.** *In this subchapter, "designated statistical agent" means an organization designated or contracted with by the commissioner under Section 38.202. (New.)*

**Sec. 38.202. STATISTICAL AGENT.** *The commissioner may, for a line or subline of insurance, designate or contract with a qualified organization to serve as the statistical agent for the commissioner to gather data relevant for regulatory purposes or as otherwise provided by this code. (V.T.I.C. Art. 21.69, Subsec. (a).)*

**Sec. 38.203. QUALIFICATIONS OF STATISTICAL AGENT.** *To qualify as a statistical agent, an organization must demonstrate at least five years of experience in data collection, data maintenance, data quality control, accounting, and related areas. (V.T.I.C. Art. 21.69, Subsec. (b).)*

**Sec. 38.204. POWERS AND DUTIES OF STATISTICAL AGENT.** (a) *A designated statistical agent shall collect data from reporting insurers under a statistical plan adopted by the commissioner.*

(b) *The statistical agent may provide aggregate historical premium and loss data to its subscribers. (V.T.I.C. Art. 21.69, Subsecs. (d), (f).)*

**Sec. 38.205. DUTY OF INSURER.** *An insurer shall provide all premium and loss cost data to the commissioner or the designated statistical agent as the commissioner or agent requires. (V.T.I.C. Art. 21.69, Subsec. (e).)*

**Sec. 38.206. FEES.** (a) *A designated statistical agent may collect from a reporting insurer any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurer.*

(b) *A reporting insurer shall pay the fee to the statistical agent for the data collection services provided by the statistical agent. (V.T.I.C. Art. 21.69, Subsec. (c).)*

**Sec. 38.207. RULES.** *The commissioner may adopt rules necessary to accomplish the purposes of this subchapter. (V.T.I.C. Art. 21.69, Subsec. (g).)*

#### CHAPTER 39. PUBLIC ACCESS

##### Sec. 39.001. ACCESS TO PROGRAMS AND FACILITIES

##### Sec. 39.002. PUBLIC COMMENT

##### Sec. 39.003. PUBLIC REPRESENTATION ON ADVISORY BODY

#### CHAPTER 39. PUBLIC ACCESS

**Sec. 39.001. ACCESS TO PROGRAMS AND FACILITIES.** (a) *The commissioner shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the department's programs.*

(b) *The department shall comply with federal and state laws for program and facility accessibility. (V.T.I.C. Art. 1.04C, Subsec. (a).)*

**Sec. 39.002. PUBLIC COMMENT.** *The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the commissioner. (V.T.I.C. Art. 1.04C, Subsec. (b).)*

**Sec. 39.003. PUBLIC REPRESENTATION ON ADVISORY BODY.** (a) *At least one-half of the membership of each advisory body appointed by the commissioner, other than an advisory body whose membership is determined by this code or by another law relating to the business of insurance in this state, must represent the general public.*

(b) *A public representative may not be:*

(1) *an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the department;*

(2) *a person required to register with the Texas Ethics Commission under Chapter 305, Government Code; or*

(3) *a person related within the second degree by affinity or consanguinity to a person described by Subdivision (1) or (2). (V.T.I.C. Art. 1.35C.)*

#### CHAPTER 40. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS AND COMMISSIONER IN CERTAIN PROCEEDINGS; RATE SETTING PROCEEDINGS

##### SUBCHAPTER A. GENERAL PROVISIONS



*Sec. 40.001. DEFINITION*

*Sec. 40.002. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS*

*Sec. 40.003. APPLICATION OF CHAPTER; EXCEPTIONS*

*Sec. 40.004. MEMORANDUM OF UNDERSTANDING*

*Sec. 40.005. CONFLICT WITH OTHER LAW*

*[Sections 40.006 to 40.050 reserved for expansion]*

**SUBCHAPTER B. PROCEEDINGS RELATING TO PROMULGATION OF RATES**

*Sec. 40.051. APPLICATION OF SUBCHAPTER*

*Sec. 40.052. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT*

*Sec. 40.053. PRESENTATION OF EVIDENCE*

*Sec. 40.054. WITNESSES AND CROSS-EXAMINATION*

*Sec. 40.055. TESTIMONY OF EXPERT WITNESS; PREFILING REQUIRED*

*Sec. 40.056. DEADLINES*

*Sec. 40.057. INFLUENCE OF COMMISSIONER PROHIBITED*

*Sec. 40.058. PROPOSAL FOR DECISION*

*Sec. 40.059. CONSIDERATION OF PROPOSAL FOR DECISION*

*Sec. 40.060. COMMISSIONER'S ORDER*

**CHAPTER 40. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS  
AND COMMISSIONER IN CERTAIN PROCEEDINGS; RATE SETTING  
PROCEEDINGS**

**SUBCHAPTER A. GENERAL PROVISIONS**

*Sec. 40.001. DEFINITION. In this chapter, "office" means the State Office of Administrative Hearings. (New; V.T.I.C. Art. 1.33B, Subsec. (b) (part).)*

*Sec. 40.002. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. The office shall conduct an administrative hearing required to be held or that may be held under this code or another insurance law of this state. (V.T.I.C. Art. 1.33B, Subsec. (b) (part).)*

*Sec. 40.003. APPLICATION OF CHAPTER; EXCEPTIONS. (a) This chapter applies only to a hearing required to be held before a decision may be rendered or action taken by the commissioner or the department.*

*(b) If a provision of this code or another insurance law of this state requires that the commissioner take an action at a hearing subject to this chapter, the commissioner shall take the action after receipt of a proposal for decision from the office regarding the hearing conducted by the office.*

*(c) This chapter does not apply to a proceeding conducted under Article 1.04D or to a proceeding relating to:*

*(1) approving or reviewing rates or rating manuals filed by an individual company, unless the rates or manuals are contested;*

*(2) adopting a rule;*

*(3) adopting or approving a policy form or policy form endorsement; or*

*(4) adopting or approving a plan of operation for an organization subject to the jurisdiction of the department. (V.T.I.C. Art. 1.33B, Subsecs. (a), (b) (part), (e).)*

*Sec. 40.004. MEMORANDUM OF UNDERSTANDING. (a) The commissioner and the chief administrative law judge of the office by rule shall adopt a memorandum of under-*

standing governing hearings conducted by the office under this code or another insurance law of this state.

(b) The memorandum of understanding must require the chief administrative law judge and the commissioner to cooperate in conducting hearings under this chapter and may authorize the office to perform any procedural act, including giving notice, that is required to be performed by the commissioner under this code or another insurance law of this state. (V.T.I.C. Art. 1.33B, Subsec. (d).)

Sec. 40.005. **CONFLICT WITH OTHER LAW.** This chapter prevails over another provision of this code or another insurance law of this state unless the provision or other law states that this chapter does not apply. (V.T.I.C. Art. 1.33B, Subsec. (f).)

[Sections 40.006 to 40.050 reserved for expansion]

#### **SUBCHAPTER B. PROCEEDINGS RELATING TO PROMULGATION OF RATES**

Sec. 40.051. **APPLICATION OF SUBCHAPTER.** Subject to Section 40.003, a proceeding to promulgate rates is governed by this subchapter. (V.T.I.C. Art. 1.33B, Subsec. (c)(1) (part).)

Sec. 40.052. **APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.** A proceeding to promulgate rates is a contested case under Chapter 2001, Government Code, and to the extent not inconsistent with this subchapter, that chapter and the Texas Rules of Civil Procedure apply. (V.T.I.C. Art. 1.33B, Subsec. (c)(1) (part).)

Sec. 40.053. **PRESENTATION OF EVIDENCE.** The administrative law judge shall provide each interested party an opportunity to respond to and present evidence and argument concerning all issues in the preceeding. (V.T.I.C. Art. 1.33B, Subsec. (c)(2) (part).)

Sec. 40.054. **WITNESSES AND CROSS-EXAMINATION.** (a) The testimony of a witness, other than an expert witness, may be presented either orally by the witness at the hearing or by affidavit.

(b) Each party is entitled to cross-examine each witness called to testify by another party to the proceeding. The attendance of a witness providing testimony by affidavit is required if a party files a written request that the witness appear for cross-examination.

(c) If a witness providing testimony by affidavit fails to appear for cross-examination after the filing of a written request that the witness appear, the administrative law judge shall exclude the affidavit from evidence and may not consider the affidavit for any purpose. (V.T.I.C. Art. 1.33B, Subsec. (c)(2) (part).)

Sec. 40.055. **TESTIMONY OF EXPERT WITNESS; PREFILING REQUIRED.** The direct testimony of each expert witness to be called must be prefiled in accordance with a schedule established by the administrative law judge. (V.T.I.C. Art. 1.33B, Subsec. (c)(2) (part).)

Sec. 40.056. **DEADLINES.** The administrative law judge shall establish reasonable deadlines for the filing of affidavits, the designation of witnesses, and other matters as are necessary or appropriate. (V.T.I.C. Art. 1.33B, Subsec. (c)(2) (part).)

Sec. 40.057. **INFLUENCE OF COMMISSIONER PROHIBITED.** The commissioner may not attempt to influence the administrative law judge's findings of fact, conclusions of law, or application of the law to the facts. (V.T.I.C. Art. 1.33B, Subsec. (c)(3).)

Sec. 40.058. **PROPOSAL FOR DECISION.** The administrative law judge shall:

(1) prepare a proposal for decision that includes proposed findings of fact and conclusions of law; and

(2) serve the proposal for decision by registered mail on each party to the proceeding. (V.T.I.C. Art. 1.33B, Subsec. (c)(4) (part).)

Sec. 40.059. **CONSIDERATION OF PROPOSAL FOR DECISION.** (a) The commissioner shall provide to each party an opportunity to file exceptions to the proposal for decision and briefs related to the issues addressed in the proposal.

(b) After the opportunity to file exceptions and briefs under Subsection (a), the commissioner shall, in open meeting, consider:

(1) the proposal for decision; and

(2) the exceptions, briefs, and arguments of the parties.

(c) The commissioner may amend the proposal for decision, including any finding of fact. The commissioner shall accompany any amendment with an explanation of the basis of the amendment. The commissioner shall base any amendment and the order adopting the rate solely on the record made before the administrative law judge.

(d) The commissioner may refer the matter back to the administrative law judge to:

(1) reconsider findings and conclusions in the proposal for decision;

(2) take additional evidence; or

(3) make additional findings of fact or conclusions of law. (V.T.I.C. Art. 1.33B, Subsecs. (c)(4) (part), (5) (part).)

Sec. 40.060. COMMISSIONER'S ORDER. The commissioner shall serve on each party a copy of the commissioner's order, including the commissioner's findings of fact and conclusions of law. (V.T.I.C. Art. 1.33B, Subsec. (c)(5) (part).)

[Chapters 41 to 80 reserved for expansion]

## SUBTITLE B. DISCIPLINE AND ENFORCEMENT

### CHAPTER 81. GENERAL PROVISIONS REGARDING DISCIPLINE AND ENFORCEMENT

#### Sec. 81.001. LIMITATIONS PERIOD FOR CERTAIN DISCIPLINARY ACTIONS

#### Sec. 81.002. NOTICE OF CERTAIN ORDERS AND DECISIONS

#### Sec. 81.003. NOTIFICATION OF CERTAIN DISCIPLINARY ACTIONS OCCURRING IN OTHER STATES; CIVIL PENALTY

#### Sec. 81.004. REPORT TO ATTORNEY GENERAL

### CHAPTER 81. GENERAL PROVISIONS REGARDING DISCIPLINE AND ENFORCEMENT

Sec. 81.001. LIMITATIONS PERIOD FOR CERTAIN DISCIPLINARY ACTIONS. (a) Except as provided by Subsection (b), the department or commissioner may not begin an action to impose a sanction, penalty, or fine, including an administrative penalty, against an insurer, agent, or other license holder who is subject to the jurisdiction of the department for conduct that is a violation of this code or another insurance law of this state after the earlier of:

(1) the fifth anniversary of the date on which the conduct that is a violation occurred; or

(2) the second anniversary of the earlier of:

(A) the date on which the conduct that is a violation is first discovered by the department; or

(B) the date on which the conduct that is a violation is made known to the department.

(b) The department or commissioner may not begin an action to impose a sanction, penalty, or fine, including an administrative penalty, against an insurer, agent, or other license holder who is subject to the jurisdiction of the department for conduct that is a violation of this code or another insurance law of this state and that involves fraud by the insurer, agent, or license holder after the fifth anniversary of the earlier of:

(1) the date on which the conduct that is a violation is first discovered by the department; or

(2) the date on which the conduct that is a violation is made known to the department.

(c) This section does not apply to conduct that is a violation that is ongoing at the time the department seeks to impose the sanction, penalty, or fine. (V.T.I.C. Art. 1.41.)

**Sec. 81.002. NOTICE OF CERTAIN ORDERS AND DECISIONS.** Notwithstanding Section 2001.142, Government Code, in a contested case before the department or the commissioner the department shall mail to each party and the party's attorney of record, by certified mail, return receipt requested, a copy of the department's or commissioner's written decision or order in that case. (V.T.I.C. Art. 1.10B.)

**Sec. 81.003. NOTIFICATION OF CERTAIN DISCIPLINARY ACTIONS OCCURRING IN OTHER STATES; CIVIL PENALTY.** (a) In this section, "insurer" means any organization, corporation, or other person that transacts insurance business, other than an organization, corporation, or other person that is specifically made exempt from this section by a reference to this section, without regard to whether the organization, corporation, or other person is listed in this subsection. The term includes:

- (1) a capital stock company;
- (2) a title insurance company;
- (3) a reciprocal or interinsurance exchange;
- (4) a Lloyd's plan insurer;
- (5) a fraternal benefit society;
- (6) a mutual company, including a mutual assessment company;
- (7) a statewide mutual assessment company;
- (8) a local mutual aid association;
- (9) a burial association;
- (10) a county mutual insurance company;
- (11) a farm mutual insurance company; and
- (12) a fidelity, guaranty, or surety company.

(b) An insurer shall notify the commissioner and shall deliver a copy of any applicable order or judgment to the commissioner not later than the 30th day after the date of the:

- (1) suspension or revocation of the insurer's right to transact business in another state;
- (2) receipt of an order to show cause why the insurer's license in another state should not be suspended or revoked; or
- (3) imposition of a penalty, forfeiture, or sanction on the insurer for a violation of the insurance laws of another state.

(c) An insurer who violates Subsection (b) is liable for a civil penalty, recoverable by a civil action, in an amount not to exceed \$500 for each violation. In addition to the civil penalty, the commissioner may suspend or revoke the license of an insurer or agent for a wilful violation of Subsection (b). (V.T.I.C. Art. 1.30, Secs. 1(a) (part), 2, 3.)

**Sec. 81.004. REPORT TO ATTORNEY GENERAL.** The department shall report to the attorney general, promptly and in detail, any violation of law relating to insurance companies or the business of insurance. (V.T.I.C. Art. 1.10, Sec. 8.)

## CHAPTER 82. SANCTIONS

### SUBCHAPTER A. GENERAL PROVISIONS

#### Sec. 82.001. DEFINITION

#### Sec. 82.002. APPLICATION OF CHAPTER

#### Sec. 82.003. PROCEEDINGS UNDER OTHER LAW

[Sections 82.004 to 82.050 reserved for expansion]

### SUBCHAPTER B. IMPOSITION OF SANCTIONS

**Sec. 82.051. CANCELLATION OR REVOCATION OF AUTHORIZATION****Sec. 82.052. OTHER SANCTIONS****Sec. 82.053. RESTITUTION****Sec. 82.054. CANCELLATION ON FAILURE TO COMPLY****Sec. 82.055. INFORMAL DISPOSITION****Sec. 82.056. NOTICE TO OTHER STATES****CHAPTER 82. SANCTIONS****SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 82.001. DEFINITION.** *In this chapter, "authorization" means a permit, license, certificate of authority, certificate of registration, or other authorization issued or existing under the commissioner's authority or this code. (V.T.I.C. Art. 1.10, Sec. 7(a) (part); New.)*

**Sec. 82.002. APPLICATION OF CHAPTER.** (a) *This chapter applies to each company regulated by the commissioner, including:*

- (1) *a domestic or foreign, stock or mutual, life, health, or accident insurance company;*
- (2) *a domestic or foreign, stock or mutual, fire or casualty insurance company;*
- (3) *a Mexican casualty company;*
- (4) *a domestic or foreign Lloyd's plan insurer;*
- (5) *a domestic or foreign reciprocal or interinsurance exchange;*
- (6) *a domestic or foreign fraternal benefit society;*
- (7) *a domestic or foreign title insurance company;*
- (8) *an attorney's title insurance company;*
- (9) *a stipulated premium insurance company;*
- (10) *a nonprofit legal service corporation;*
- (11) *a health maintenance organization;*
- (12) *a statewide mutual assessment company;*
- (13) *a local mutual aid association;*
- (14) *a local mutual burial association;*
- (15) *an association exempt under Article 14.17;*
- (16) *a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 80;*
- (17) *a county mutual insurance company; and*
- (18) *a farm mutual insurance company.*

(b) *This chapter also applies to:*

- (1) *an agent of an entity described by Subsection (a); and*
- (2) *a person who:*
  - (A) *is engaged in the business of insurance;*
  - (B) *holds an authorization; or*
  - (C) *is regulated by the commissioner.*

(c) *The commissioner's authority under this chapter applies to each form of authorization and each person holding an authorization. (V.T.I.C. Art. 1.10, Secs. 7(f) (part), (g).)*

**Sec. 82.003. PROCEEDINGS UNDER OTHER LAW.** *The commissioner's authority under this chapter is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law. (V.T.I.C. Art. 1.10, Sec. 7(f) (part).)*

[Sections 82.004 to 82.050 reserved for expansion]

#### SUBCHAPTER B. IMPOSITION OF SANCTIONS

**Sec. 82.051. CANCELLATION OR REVOCATION OF AUTHORIZATION.** After notice and opportunity for a hearing, the commissioner may cancel or revoke an authorization if the holder of the authorization is found to be in violation of, or to have failed to comply with, this code or a rule of the commissioner. (V.T.I.C. Art. 1.10, Sec. 7(a) (part).)

**Sec. 82.052. OTHER SANCTIONS.** In addition to the cancellation or revocation of an authorization under Section 82.051, the commissioner may:

- (1) suspend the authorization for a specified time not to exceed one year;
- (2) order the holder of the authorization to cease and desist from:
  - (A) the activity determined to be in violation of this code or a rule of the commissioner; or
  - (B) the failure to comply with this code or a rule of the commissioner;
- (3) direct the holder of the authorization to pay an administrative penalty under Chapter 84;
- (4) direct the holder of the authorization to make restitution under Section 82.053; or
- (5) take any combination of those actions. (V.T.I.C. Art. 1.10, Sec. 7(a) (part).)

**Sec. 82.053. RESTITUTION.** (a) The commissioner may direct the holder of an authorization to make complete restitution to each Texas resident, each Texas insured, and each entity operating in this state that is harmed by a violation of, or failure to comply with, this code or a rule of the commissioner.

(b) The holder of the authorization shall make the restitution in the form and amount and within the period determined by the commissioner. (V.T.I.C. Art. 1.10, Secs. 7(a) (part), (b).)

**Sec. 82.054. CANCELLATION ON FAILURE TO COMPLY.** If it is found after hearing that a holder of an authorization has failed to comply with an order issued under Section 82.052, the commissioner shall cancel each authorization held by the holder. (V.T.I.C. Art. 1.10, Sec. 7(c).)

**Sec. 82.055. INFORMAL DISPOSITION.** (a) The commissioner may informally dispose of a matter under this subchapter by consent order, agreed settlement, stipulation, or default.

(b) An informal disposition may include a provision under which the holder of the authorization agrees to a sanction under this subchapter with the express reservation that:

- (1) the holder does not admit a violation of this code or of a rule; and
- (2) the existence of a violation is in dispute. (V.T.I.C. Art. 1.10, Sec. 7(d).)

**Sec. 82.056. NOTICE TO OTHER STATES.** The commissioner shall give notice of an action taken under this subchapter to the insurance commissioner or other similar officer of each state. (V.T.I.C. Art. 1.10, Sec. 7(e).)

### CHAPTER 83. EMERGENCY CEASE AND DESIST ORDERS

#### SUBCHAPTER A. GENERAL PROVISIONS

##### Sec. 83.001. DEFINITIONS

##### Sec. 83.002. APPLICATION OF CHAPTER

##### Sec. 83.003. RULES

##### Sec. 83.004. PROCEEDINGS UNDER OTHER LAW

[Sections 83.005 to 83.050 reserved for expansion]

#### SUBCHAPTER B. ISSUANCE OF ORDERS

##### Sec. 83.051. AUTHORITY OF COMMISSIONER TO ISSUE ORDER

*Sec. 83.052. NOTICE*

*Sec. 83.053. REQUEST FOR HEARING*

*Sec. 83.054. HEARING*

*Sec. 83.055. EFFECT OF ORDER PENDING HEARING*

*[Sections 83.056 to 83.100 reserved for expansion]*

*SUBCHAPTER C. ENFORCEMENT*

*Sec. 83.101. AUTHORITY OF COMMISSIONER*

*Sec. 83.102. DETERMINATION OF VIOLATION*

*Sec. 83.103. HEARING ON ADMINISTRATIVE PENALTY*

*Sec. 83.104. IMPOSITION OF ADMINISTRATIVE PENALTY; RESTITUTION*

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*SUBCHAPTER D. JUDICIAL REVIEW; JUDICIAL ACTION*

*Sec. 83.151. APPEAL*

*Sec. 83.152. EFFECT OF PETITION ON ORDER OR RELATED DECISION*

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OF ORDER; ATTORNEY'S FEES*

*CHAPTER 83. EMERGENCY CEASE AND DESIST ORDERS*

*SUBCHAPTER A. GENERAL PROVISIONS*

*Sec. 83.001. DEFINITIONS. In this chapter:*

- (1) "Authorized person" means an individual or entity described by Section 83.002.*
- (2) "Emergency" means a sudden, urgent occurrence that requires immediate action.*
- (3) "Unauthorized person" means a person who directly or indirectly does an act of insurance business that is:*
  - (A) described by Section 101.051 or 101.052; and*
  - (B) not done in accordance with specific authorization of law.*
- (4) "Unfair act" means an unfair method of competition, an unfair or deceptive act or practice, or an unfair claim settlement practice as defined under Article 21.21 or 21.21-2 or a rule adopted under either article. (V.T.I.C. Art. 1.10A, Secs. 1(1) (part), (2), (5), 2 (part); New.)*

*Sec. 83.002. APPLICATION OF CHAPTER. (a) This chapter applies to each company regulated by the commissioner, including:*

- (1) a domestic or foreign, stock or mutual, life, health, or accident insurance company;*
- (2) a domestic or foreign, stock or mutual, fire or casualty insurance company;*
- (3) a Mexican casualty company;*
- (4) a domestic or foreign Lloyd's plan insurer;*
- (5) a domestic or foreign reciprocal or interinsurance exchange;*
- (6) a domestic or foreign fraternal benefit society;*
- (7) a domestic or foreign title insurance company;*
- (8) an attorney's title insurance company;*
- (9) a stipulated premium insurance company;*

- (10) a nonprofit legal service corporation;
  - (11) a statewide mutual assessment company;
  - (12) a local mutual aid association;
  - (13) a local mutual burial association;
  - (14) an association exempt under Article 14.17;
  - (15) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 20;
  - (16) a county mutual insurance company; and
  - (17) a farm mutual insurance company.
- (b) This chapter also applies to:
- (1) an agent of an entity described by Subsection (a); and
  - (2) a person who:
    - (A) is engaged in the business of insurance;
    - (B) holds a permit, certificate, registration, license, or other authority under this code; or
    - (C) is regulated by the commissioner. (V.T.I.C. Art. 1.10A, Sec. 1(1) (part).)

Sec. 83.003. **RULES.** The commissioner may adopt reasonable rules to implement this chapter, including rules that provide, to the extent possible, uniformity of procedures between this state and other states, the United States, or the National Association of Insurance Commissioners. (V.T.I.C. Art. 1.10A, Sec. 6.)

Sec. 83.004. **PROCEEDINGS UNDER OTHER LAW.** The commissioner may proceed solely under this chapter or under this chapter in conjunction with other applicable law. (V.T.I.C. Art. 1.10A, Sec. 7.)

[Sections 83.005 to 83.050 reserved for expansion]

#### SUBCHAPTER B. ISSUANCE OF ORDERS

Sec. 83.051. **AUTHORITY OF COMMISSIONER TO ISSUE ORDER.** (a) The commissioner ex parte may issue an emergency cease and desist order if:

- (1) the commissioner believes that:
  - (A) an authorized person engaging in the business of insurance is:
    - (i) committing an unfair act; or
    - (ii) in a hazardous condition or a hazardous financial condition under Section 19, Texas Health Maintenance Organization Act (Article 20A.19, Vernon's Texas Insurance Code), or Article 1.32, as determined by the commissioner; or
  - (B) an unauthorized person:
    - (i) is engaging in the business of insurance in violation of Chapter 101 or in violation of a rule adopted under that chapter; or
    - (ii) is engaging in the business of insurance in violation of Chapter 101 and is committing an unfair act; and
- (2) it appears to the commissioner that the alleged conduct:
  - (A) is fraudulent;
  - (B) is hazardous or creates an immediate danger to the public safety; or
  - (C) is causing or can be reasonably expected to cause public injury that:
    - (i) is likely to occur at any moment;
    - (ii) is incapable of being repaired or rectified; and
    - (iii) has or is likely to have influence or effect.



(b) *An order is final on the 31st day after the date it is received, unless the affected person requests a hearing under Section 83.053. (V.T.I.C. Art. 1.10A, Secs. 1(6), (7), (8), 2 (part), 3(j).)*

**Sec. 83.052. NOTICE.** (a) *On issuance of an order under Section 83.051, the commissioner shall serve on the affected person an order that:*

- (1) *contains a statement of the charges; and*
- (2) *requires the person immediately to cease and desist from the acts, methods, or practices stated in the order.*

(b) *The commissioner shall serve the order by registered or certified mail, return receipt requested, to the affected person's last known address. (V.T.I.C. Art. 1.10A, Sec. 3(a).)*

**Sec. 83.053. REQUEST FOR HEARING.** (a) *A person affected by an order is entitled to request a hearing to contest the order.*

(b) *The affected person must request the hearing not later than the 30th day after the date on which the person receives the order required by Section 83.052.*

(c) *A request to contest an order must:*

- (1) *be in writing;*
- (2) *be directed to the commissioner; and*
- (3) *state the grounds for the request to set aside or modify the order. (V.T.I.C. Art. 1.10A, Sec. 3(b).)*

**Sec. 83.054. HEARING.** (a) *On receiving a request for a hearing under Section 83.053, the commissioner shall serve notice of the time and place of the hearing.*

(b) *The hearing is subject to the procedures for contested cases under Chapter 2001, Government Code. The hearing must be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date.*

(c) *At the hearing, the person requesting the hearing is entitled to show cause why the order should not be affirmed.*

(d) *Following receipt of the proposal for decision from the State Office of Administrative Hearings regarding the hearing, the commissioner shall affirm, modify, or set aside in whole or in part the order. (V.T.I.C. Art. 1.10A, Secs. 3(c), (e), (f).)*

**Sec. 83.055. EFFECT OF ORDER PENDING HEARING.** *Pending a hearing under this subchapter, an order continues in effect unless the order is stayed by the commissioner. (V.T.I.C. Art. 1.10A, Sec. 3(d).)*

*[Sections 83.056 to 83.100 reserved for expansion]*

#### SUBCHAPTER C. ENFORCEMENT

**Sec. 83.101. AUTHORITY OF COMMISSIONER.** *If the commissioner reasonably believes that a person has violated an order issued under this chapter, the commissioner may:*

- (1) *initiate proceedings under this subchapter to impose an administrative penalty or direct restitution;*
- (2) *refer the matter to the attorney general for enforcement;*
- (3) *initiate a proceeding to revoke the person's certificate of authority; or*
- (4) *pursue another action the commissioner considers appropriate under applicable law. (V.T.I.C. Art. 1.10A, Sec. 4(a).)*

**Sec. 83.102. DETERMINATION OF VIOLATION.** *In determining whether an order has been violated, the commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order. (V.T.I.C. Art. 1.10A, Sec. 4(c) (part).)*

**Sec. 83.103. HEARING ON ADMINISTRATIVE PENALTY.** (a) *If the commissioner pursues action to impose an administrative penalty under Section 83.101(1), the commis-*

sioner shall serve on the person notice of the time and place of a hearing to be held not earlier than the 21st day after the date the notice is received.

(b) The notice must contain a statement of the facts or conduct alleged to violate the order.

(c) The commissioner shall serve the notice by registered or certified mail, return receipt requested, to the person's last known address.

(d) The hearing is subject to the procedures for contested cases under Chapter 2001, Government Code. (V.T.I.C. Art. 1.10A, Secs. 4(b), (c) (part).)

Sec. 83.104. **IMPOSITION OF ADMINISTRATIVE PENALTY; RESTITUTION.** (a) After a hearing, if the commissioner determines that an order has been violated, the commissioner may:

(1) impose an administrative penalty of \$25,000 for each act of violation;

(2) direct the person against whom the order was issued to make complete restitution to each Texas resident, Texas insured, and entity operating in this state that is harmed by the violation; or

(3) impose the penalty and direct restitution.

(b) A person directed to make restitution shall make the restitution in the form and amount and within the period determined by the commissioner. (V.T.I.C. Art. 1.10A, Sec. 4(d).)

Sec. 83.105. **FAILURE TO PAY PENALTY.** If a person fails to pay a penalty assessed under this subchapter, the commissioner may:

(1) refer the matter to the attorney general for enforcement; or

(2) cancel or revoke any permit, license, certificate of authority, certificate of registration, or other authorization issued under this code as provided by Chapter 82. (V.T.I.C. Art. 1.10A, Sec. 5.)

[Sections 83.106 to 83.150 reserved for expansion]

#### **SUBCHAPTER D. JUDICIAL REVIEW; JUDICIAL ACTION**

Sec. 83.151. **APPEAL.** A person affected by an order of the commissioner under Section 83.051 or 83.104 may appeal the order by filing suit in a district court in Travis County not later than the 20th day after the date of the order. (V.T.I.C. Art. 1.10A, Secs. 3(h) (part), 4(f) (part).)

Sec. 83.152. **EFFECT OF PETITION ON ORDER OR RELATED DECISION.** A petition for appeal filed under Section 83.151 does not stay or vacate an order or a decision made under Subchapter B unless the court, after hearing, issues an order that specifically stays or vacates the order or decision. (V.T.I.C. Art. 1.10A, Sec. 3(h) (part).)

Sec. 83.153. **JUDICIAL ACTION FOR ENFORCEMENT OF ORDER; ATTORNEY'S FEES.** The department may recover reasonable attorney's fees if judicial action is necessary to enforce an order issued under Section 83.051 or 83.104. (V.T.I.C. Art. 1.10A, Secs. 3(i), 4(f) (part).)

### **CHAPTER 84. ADMINISTRATIVE PENALTIES**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

##### **Sec. 84.001. DEFINITION**

##### **Sec. 84.002. APPLICATION OF CHAPTER TO ADMINISTRATIVE PENALTY**

##### **Sec. 84.003. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT**

[Sections 84.004 to 84.020 reserved for expansion]

#### **SUBCHAPTER B. IMPOSITION OF ADMINISTRATIVE PENALTY**

##### **Sec. 84.021. IMPOSITION OF PENALTY**

**Sec. 84.022. PENALTY AMOUNT**

*[Sections 84.023 to 84.040 reserved for expansion]*

**SUBCHAPTER C. PROCEDURAL REQUIREMENTS**

**Sec. 84.041. REPORT AND NOTICE OF VIOLATION AND PENALTY**

**Sec. 84.042. PENALTY TO BE PAID OR HEARING REQUESTED**

**Sec. 84.043. HEARING AND DECISION**

**Sec. 84.044. DECISION BY COMMISSIONER**

**Sec. 84.045. OPTIONS FOLLOWING DECISION: PAY OR APPEAL**

**Sec. 84.046. STAY OF ENFORCEMENT OF PENALTY**

**Sec. 84.047. COLLECTION OF PENALTY**

**Sec. 84.048. STANDARD OF JUDICIAL REVIEW**

**Sec. 84.049. DECISION BY COURT**

**Sec. 84.050. REMITTANCE OF PENALTY AND INTEREST**

**Sec. 84.051. RELEASE OF BOND**

**CHAPTER 84. ADMINISTRATIVE PENALTIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 84.001. DEFINITION.** *In this chapter, "person" means an individual, corporation, trust, partnership, association, or any other legal entity. (V.T.I.C. Art. 1.10E, Sec. 1(1).)*

**Sec. 84.002. APPLICATION OF CHAPTER TO ADMINISTRATIVE PENALTY.** *(a) This chapter applies to each monetary penalty the department or commissioner imposes under this code or another insurance law of this state.*

*(b) For purposes of this chapter, each of the monetary penalties is an administrative penalty. (V.T.I.C. Art. 1.10E, Secs. 1(2), 8.)*

**Sec. 84.003. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.** *A proceeding under this chapter is subject to Chapter 2001, Government Code. (V.T.I.C. Art. 1.10E, Sec. 7.)*

*[Sections 84.004 to 84.020 reserved for expansion]*

**SUBCHAPTER B. IMPOSITION OF ADMINISTRATIVE PENALTY**

**Sec. 84.021. IMPOSITION OF PENALTY.** *The commissioner may impose an administrative penalty on a person licensed or regulated under this code or another insurance law of this state who violates:*

*(1) this code;*

*(2) another insurance law of this state; or*

*(3) a rule or order adopted under this code or another insurance law of this state. (V.T.I.C. Art. 1.10E, Sec. 2 (part).)*

**Sec. 84.022. PENALTY AMOUNT.** *(a) The penalty for a violation may not exceed \$25,000, unless a greater or lesser penalty is specified by this code or another insurance law of this state.*

*(b) The amount of the penalty shall be based on:*

*(1) the seriousness of the violation, including:*

*(A) the nature, circumstances, extent, and gravity of the violation; and*

- (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the economic harm to the public interest or public confidence caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation;
- (6) whether the violation was intentional; and
- (7) any other matter that justice may require. (V.T.I.C. Art. 1.10E, Sec. 3.)

[Sections 84.023 to 84.040 reserved for expansion]

#### SUBCHAPTER C. PROCEDURAL REQUIREMENTS

**Sec. 84.041. REPORT AND NOTICE OF VIOLATION AND PENALTY.** (a) If the department determines that a violation has occurred, the department may issue to the commissioner a report that states the facts on which the determination is based and the department's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the department shall give written notice of the report to the affected person. The notice may be given by certified mail. The notice must:

(1) include:

- (A) a brief summary of the alleged violation; and
- (B) a statement of the amount of the recommended penalty; and

(2) inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty. (V.T.I.C. Art. 1.10E, Secs. 2 (part), 4(a), (b).)

**Sec. 84.042. PENALTY TO BE PAID OR HEARING REQUESTED.** (a) Not later than the 20th day after the date the person receives the notice, the person, in writing, may:

(1) accept the department's determination and recommended administrative penalty; or

(2) request a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) If the person accepts the department's determination and recommended penalty, the commissioner by order shall approve the determination and require the person to pay the recommended penalty. (V.T.I.C. Art. 1.10E, Secs. 4(c), (d).)

**Sec. 84.043. HEARING AND DECISION.** (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the department shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty. (V.T.I.C. Art. 1.10E, Sec. 4(e) (part).)

**Sec. 84.044. DECISION BY COMMISSIONER.** (a) Based on the findings of fact, conclusions of law, and proposal for decision, the commissioner by order may:

- (1) find that a violation occurred and impose an administrative penalty; or
- (2) find that a violation did not occur.

(b) The notice of the commissioner's order must include a statement of the right of the person to judicial review of the order. (V.T.I.C. Art. 1.10E, Secs. 4(e) (part), (f).)

**Sec. 84.045. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** Not later than the 30th day after the date the commissioner's order becomes final, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation or the amount of the penalty, or both, and either pay or not pay the penalty. (V.T.I.C. Art. 1.10E, Sec. 4(g).)

**Sec. 84.046. STAY OF ENFORCEMENT OF PENALTY.** (a) A person who files a petition for judicial review without paying the administrative penalty may, within the 30-day period prescribed by Section 84.045:

- (1) stay enforcement of the penalty by:
  - (A) paying the penalty to the court for placement in an escrow account; or
  - (B) giving the court a supersedeas bond approved by the court that:
    - (i) is for the amount of the penalty; and
    - (ii) is effective until all judicial review of the board's order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court an affidavit stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
  - (B) giving a copy of the affidavit to the commissioner by certified mail.

(b) If the commissioner receives a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond. (V.T.I.C. Art. 1.10E, Secs. 4(h), (i).)

**Sec. 84.047. COLLECTION OF PENALTY.** If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the penalty. (V.T.I.C. Art. 1.10E, Sec. 4(j).)

**Sec. 84.048. STANDARD OF JUDICIAL REVIEW.** The order of the commissioner is subject to judicial review under the substantial evidence rule. (V.T.I.C. Art. 1.10E, Sec. 5(a).)

**Sec. 84.049. DECISION BY COURT.** (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed. (V.T.I.C. Art. 1.10E, Sec. 5(b).)

**Sec. 84.050. REMITTANCE OF PENALTY AND INTEREST.** (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted. (V.T.I.C. Art. 1.10E, Sec. 5(c) (part).)

**Sec. 84.051. RELEASE OF BOND.** (a) If the person gave a supersedeas bond and if the administrative penalty is not upheld by the court, the court shall order, when the judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount. (V.T.I.C. Art. 1.10E, Sec. 5(c) (part).)

CHAPTER 85. GENERAL CRIMINAL ENFORCEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. VIOLATION OF CERTAIN LAWS FOR WHICH PUNISHMENT IS NOT PROVIDED; OFFENSE

[Sections 85.002 to 85.050 reserved for expansion]

SUBCHAPTER B. PROSECUTION OF OFFENSES

Sec. 85.051. VENUE FOR PROSECUTION

Sec. 85.052. ELECTION OF PROSECUTION

CHAPTER 85. GENERAL CRIMINAL ENFORCEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. VIOLATION OF CERTAIN LAWS FOR WHICH PUNISHMENT IS NOT PROVIDED; OFFENSE. (a) A person commits an offense if the person violates a law of this state regulating the business of life, fire, or marine insurance.

(b) Unless another penalty is provided by law, an offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. (V.T.I.C. Art. 21.51.)

[Sections 85.002 to 85.050 reserved for expansion]

SUBCHAPTER B. PROSECUTION OF OFFENSES

Sec. 85.051. VENUE FOR PROSECUTION. (a) A person who violates the Penal Code or a penal provision of this code while engaged in the business of insurance may be prosecuted in:

(1) Travis County; or

(2) a county in which prosecution is authorized under the Code of Criminal Procedure.

(b) A law limiting regulation by the department under this code or another insurance law of this state does not restrict the application of this section.

(c) This section controls if there is a conflict or ambiguity between this section and another provision of this code or another insurance law of this state. (V.T.I.C. Art. 21.79B.)

Sec. 85.052. ELECTION OF PROSECUTION. A person who commits an offense under this code may be prosecuted under this code or any other law of this state under which the person may be prosecuted. (V.T.I.C. Art. 21.79C.)

[Chapters 86 to 100 reserved for expansion]

CHAPTER 101. UNAUTHORIZED INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. STATE POLICY AND PURPOSE

Sec. 101.002. DEFINITIONS

Sec. 101.003. INSURANCE EXCHANGES AND SYNDICATES; RULES

Sec. 101.004. UNCONSTITUTIONAL APPLICATION PROHIBITED; NOTICE TO COMMISSIONER

[Sections 101.005 to 101.050 reserved for expansion]

SUBCHAPTER B. BUSINESS OF INSURANCE; EXCEPTIONS

*Sec. 101.051. CONDUCT THAT CONSTITUTES THE BUSINESS OF INSURANCE*

*Sec. 101.052. ADVERTISING RELATING TO MEDICARE SUPPLEMENT POLICIES*

*Sec. 101.053. APPLICATION OF SUBCHAPTER*

*Sec. 101.054. EXCEPTION; FULL-TIME SALARIED EMPLOYEE*

*Sec. 101.055. EXCEPTION; CERTAIN ENTITIES  
THAT REIMBURSE MEDICAL EXPENSES*

*[Sections 101.056 to 101.100 reserved for expansion]*

**SUBCHAPTER C. PROHIBITION; ENFORCEMENT**

*Sec. 101.101. DEFINITION*

*Sec. 101.102. UNAUTHORIZED INSURANCE PROHIBITED*

*Sec. 101.103. POWERS OF COMMISSIONER;  
REMEDIES FOR CERTAIN CONDUCT*

*Sec. 101.104. REQUEST FOR INFORMATION*

*Sec. 101.105. CIVIL PENALTY; INJUNCTIVE RELIEF*

*Sec. 101.106. CRIMINAL PENALTY*

*[Sections 101.107 to 101.150 reserved for expansion]*

**SUBCHAPTER D. CEASE AND DESIST ORDERS**

*Sec. 101.151. POWERS OF COMMISSIONER; NOTICE OF HEARING*

*Sec. 101.152. HEARING*

*Sec. 101.153. CEASE AND DESIST ORDER*

*Sec. 101.154. ENFORCEMENT; REFERRAL TO ATTORNEY GENERAL*

*Sec. 101.155. EFFECT OF PRIOR PROCEEDINGS*

*Sec. 101.156. RULES*

*[Sections 101.157 to 101.200 reserved for expansion]*

**SUBCHAPTER E. INSURANCE CONTRACTS WITH UNAUTHORIZED INSURERS**

*Sec. 101.201. VALIDITY OF INSURANCE CONTRACTS*

*Sec. 101.202. ATTORNEY'S FEES*

*Sec. 101.203. INVESTIGATION AND DISCLOSURE*

*[Sections 101.204 to 101.250 reserved for expansion]*

**SUBCHAPTER F. TAXES**

*Sec. 101.251. PREMIUM RECEIPTS TAX*

*Sec. 101.252. INDEPENDENTLY PROCURED INSURANCE TAX*

*Sec. 101.253. FILING REQUIREMENTS FOR CORPORATIONS*

*[Sections 101.254 to 101.300 reserved for expansion]*

**SUBCHAPTER G. REPORTING OF UNAUTHORIZED INSURANCE**

*Sec. 101.301. REPORTING REQUIRED*

## CHAPTER 101. UNAUTHORIZED INSURANCE

## SUBCHAPTER A. GENERAL PROVISIONS

**Sec. 101.001. STATE POLICY AND PURPOSE.** (a) It is a state concern that many residents of this state hold insurance policies issued by persons or insurers who are not authorized to do insurance business in this state and who are not qualified as eligible surplus lines insurers under Article 1.14-2. These residents face often insurmountable obstacles in asserting legal rights under the policies in foreign forums under unfamiliar laws and rules of practice.

(b) It is the policy of this state to protect residents against acts by a person or insurer who is not authorized to do insurance business in this state by:

- (1) maintaining fair and honest insurance markets;
- (2) protecting the premium tax revenues of this state;
- (3) protecting authorized persons and insurers, who are subject to strict regulation, from unfair competition by unauthorized persons and insurers; and
- (4) protecting against evasion of the insurance regulatory laws of this state.

(c) The purpose of this chapter is to subject certain insurers and other persons to the jurisdiction of:

- (1) the commissioner and proceedings before the commissioner; and
- (2) the courts of this state in suits by or on behalf of the state or an insured or beneficiary under an insurance contract. (V.T.I.C. Art. 1.14-1, Sec. 1 (part).)

**Sec. 101.002. DEFINITIONS.** In this chapter:

(1) "Insurer" includes:

- (A) a corporation, association, partnership, or individual engaged as a principal in the business of insurance;
- (B) an interinsurance exchange or mutual benefit society; or
- (C) an insurance exchange or syndicate.

(2) "Unfair act" means an unfair method of competition or an unfair or deceptive act or practice as defined under Article 21.21 or a rule adopted under that article. (V.T.I.C. Art. 1.14-1, Secs. 2(a) (part), 3(e) (part), 3A(a) (part).)

**Sec. 101.003. INSURANCE EXCHANGES AND SYNDICATES; RULES.** The commissioner shall adopt rules defining insurance exchanges and syndicates that are insurers for purposes of Section 101.002. (V.T.I.C. Art. 1.14-1, Secs. 2(a) (part), (c).)

**Sec. 101.004. UNCONSTITUTIONAL APPLICATION PROHIBITED; NOTICE TO COMMISSIONER.** (a) Subject to Subsection (b), this chapter does not apply to an insurer or other person to whom, under the constitution or statutes of the United States or the constitution of this state, it may not apply.

(b) Before commencing operations, an insurer or other person claiming an exemption described by Subsection (a) must file with the commissioner:

- (1) notice of the claim; and
- (2) documents supporting the claim. (V.T.I.C. Art. 1.14-1, Sec. 14.)

[Sections 101.005 to 101.050 reserved for expansion]

## SUBCHAPTER B. BUSINESS OF INSURANCE; EXCEPTIONS

**Sec. 101.051. CONDUCT THAT CONSTITUTES THE BUSINESS OF INSURANCE.** (a) In this section, "medical expense" includes surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses.

(b) The following acts in this state constitute the business of insurance in this state:



- (1) *making or proposing to make, as an insurer, an insurance contract;*
- (2) *making or proposing to make, as guarantor or surety, a guaranty or suretyship contract as a vocation and not merely incidental to another legitimate business or activity of the guarantor or surety;*
- (3) *taking or receiving an insurance application;*
- (4) *receiving or collecting any consideration for insurance, including:*
  - (A) *a premium;*
  - (B) *a commission;*
  - (C) *a membership fee;*
  - (D) *an assessment; or*
  - (E) *dues;*
- (5) *issuing or delivering an insurance contract to:*
  - (A) *a resident of this state; or*
  - (B) *a person authorized to do business in this state;*
- (6) *directly or indirectly acting as an agent for or otherwise representing or assisting an insurer or other person in:*
  - (A) *soliciting, negotiating, procuring, or effectuating insurance or a renewal of insurance;*
  - (B) *disseminating information relating to coverage or rates;*
  - (C) *forwarding an insurance application;*
  - (D) *delivering an insurance policy or contract;*
  - (E) *inspecting a risk;*
  - (F) *setting a rate;*
  - (G) *investigating or adjusting a claim or loss;*
  - (H) *transacting a matter after the effectuation of the contract that arises out of the contract; or*
  - (I) *representing or assisting an insurer or other person in any other manner in the transaction of insurance with respect to a subject of insurance that is resident, located, or to be performed in this state;*
- (7) *contracting to provide in this state indemnification or expense reimbursement for a medical expense by direct payment, reimbursement, or otherwise to a person domiciled in this state or for a risk located in this state, whether as an insurer, agent, administrator, trust, or funding mechanism or by another method;*
- (8) *doing any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance;*
- (9) *doing or proposing to do any insurance business that is in substance equivalent to conduct described by Subdivisions (1)–(8) in a manner designed to evade statutes relating to insurance; or*
- (10) *any other transaction of business in this state by an insurer. (V.T.I.C. Art. 1.14–1, Sec. 2(a) (part).)*

**Sec. 101.052. ADVERTISING RELATING TO MEDICARE SUPPLEMENT POLICIES.** *With respect to a Medicare supplement policy authorized under Article 3.74, the business of insurance in this state includes using, creating, publishing, mailing, or disseminating in this state an advertisement relating to an act that constitutes the business of insurance under Section 101.051 unless the advertisement is used, created, published, mailed, or disseminated on behalf of an insurer or other person who:*

- (1) *is authorized under this code to engage in the business of insurance in this state;*
- (2) *has actual knowledge of the content of the advertisement;*
- (3) *has authorized the advertisement to be used, created, published, mailed, or disseminated on that insurer's or other person's behalf; and*

(4) is clearly identified by name in the advertisement as the sponsor of the advertisement. (V.T.I.C. Art. 1.14-1, Sec. 2(a) (part).)

**Sec. 101.053. APPLICATION OF SUBCHAPTER.** (a) Sections 101.051 and 101.052 apply to an act whether performed by mail or otherwise. Venue for an act performed by mail is at the place where the matter transmitted by mail is delivered and takes effect.

(b) Sections 101.051 and 101.052 do not apply to:

(1) the lawful transaction of surplus lines insurance under Article 1.14-2;

(2) the lawful transaction of reinsurance by insurers;

(3) a transaction in this state that:

(A) involves a policy that:

(i) is lawfully solicited, written, and delivered outside this state; and

(ii) covers, at the time the policy is issued, only subjects of insurance that are not resident, located, or expressly to be performed in this state; and

(B) takes place after the policy is issued;

(4) a transaction:

(A) that involves an insurance contract independently procured through negotiations occurring entirely outside this state;

(B) that is reported; and

(C) on which premium tax is paid in accordance with this chapter;

(5) a transaction in this state that:

(A) involves group life, health, or accident insurance, other than credit insurance, and group annuities in which the master policy for the group was lawfully issued and delivered in a state in which the insurer or other person was authorized to do insurance business; and

(B) is authorized by a statute of this state;

(6) a management or accounting activity in this state on behalf of a nonadmitted captive insurance company that insures solely directors' and officers' liability insurance for:

(A) the directors and officers of the company's parent and affiliated companies;

(B) the risks of the company's parent and affiliated companies; or

(C) both the individuals and entities described by Paragraphs (A) and (B);

(7) the issuance of a qualified charitable gift annuity under Chapter 102; or

(8) a lawful transaction by a servicing company of the Texas workers' compensation employers' rejected risk fund under Section 4.08, Article 5.76-2, as that article existed before its repeal.

(c) Subsection (b)(6) does not exempt an insured or insurer from the payment of an applicable tax on premium or from another applicable provision of this code. (V.T.I.C. Art. 1.14-1, Secs. 2(a) (part), (b).)

**Sec. 101.054. EXCEPTION; FULL-TIME SALARIED EMPLOYEE.** Section 101.051(b)(6) does not prohibit a full-time salaried employee of a corporate insured from acting as an insurance manager or buyer in placing insurance on behalf of:

(1) the employee's employer; or

(2) a parent or affiliated company of the employer. (V.T.I.C. Art. 1.14-1, Sec. 2(a) (part).)

**Sec. 101.055. EXCEPTION; CERTAIN ENTITIES THAT REIMBURSE MEDICAL EXPENSES.** (a) Section 101.051(b)(7) does not apply to:

(1) a program otherwise authorized by law that is established:

(A) by a political subdivision of this state;

(B) by a state agency; or

(C) under Chapter 791, Government Code; or

(2) a multiple employer welfare arrangement that is fully insured as defined by 29 U.S.C. Section 1144(b)(6).

(b) Notwithstanding Subsection (a)(2), the commissioner may apply a law regulating the business of insurance to a multiple employer welfare arrangement described by that subdivision to the extent that the law provides:

(1) standards requiring the maintenance of specified levels of contributions that the plan, or a trust established under the plan, must meet to be considered able to pay benefits in full when due; and

(2) provisions to enforce the standards described by Subdivision (1). (V.T.I.C. Art. 1.14-1, Sec. 2(a) (part).)

[Sections 101.056 to 101.100 reserved for expansion]

### SUBCHAPTER C. PROHIBITION; ENFORCEMENT

Sec. 101.101. **DEFINITION.** In this subchapter, "person" means an individual or entity that is a person for purposes of Section 2(a), Article 21.21. (V.T.I.C. Art. 1.14-1, Sec. 3(a).)

Sec. 101.102. **UNAUTHORIZED INSURANCE PROHIBITED.** (a) A person, including an insurer, may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute.

(b) With respect to insurance of a subject that is resident, located, or to be performed in this state, this section does not prohibit an act performed outside this state, including the collection of premiums, by a person, including an insurer, authorized to do business in this state if the transaction and insurance contract otherwise comply with statute. (V.T.I.C. Art. 1.14-1, Sec. 3(b).)

Sec. 101.103. **POWERS OF COMMISSIONER; REMEDIES FOR CERTAIN CONDUCT.** (a) If the commissioner has reason to believe a person, including an insurer, has violated or is threatening to violate this chapter or a rule adopted under this chapter, or that a person, including an insurer, violating this chapter has engaged in or is threatening to engage in an unfair act, the commissioner may:

- (1) issue a cease and desist order under Subchapter D;
- (2) seek injunctive relief under Section 101.105;
- (3) request the attorney general to recover a civil penalty under Section 101.105; or
- (4) take any combination of those actions.

(b) This section does not limit the department to the remedies specified in this section. The department and this state may choose at any time, without regard to prior proceedings under this section, any available remedy or action to immediately stop or enjoin a person from engaging in the business of insurance without statutory authorization. (V.T.I.C. Art. 1.14-1, Secs. 3(e) (part), (h).)

Sec. 101.104. **REQUEST FOR INFORMATION.** If the commissioner has reason to believe that a person, including an insurer, is performing an act described by Section 101.051 or 101.052, the person shall immediately provide to the commissioner, on written request of the commissioner, information relating to that act. (V.T.I.C. Art. 1.14-1, Sec. 3(c).)

Sec. 101.105. **CIVIL PENALTY; INJUNCTIVE RELIEF.** (a) A person or entity, including an insurer, that violates this chapter is subject to a civil penalty of not more than \$10,000 for each act of violation and for each day of violation.

(b) The commissioner may request that the attorney general institute a civil suit in a district court in Travis County for injunctive relief to restrain a person or entity, including an insurer, from continuing a violation or threat of violation described by Section 101.103(a). On application for injunctive relief and a finding that a person or entity, including an insurer, is violating or threatening to violate this chapter, the district court shall grant the injunctive relief and issue an injunction without bond.

(c) On request by the commissioner, the attorney general shall institute and conduct a civil suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized under this subchapter. (V.T.I.C. Art. 1.14-1, Secs. 3(d), (e) (part), (f), (g).)

**Sec. 101.106. CRIMINAL PENALTY.** (a) A person, including an insurer, who violates Section 101.102 commits an offense.

(b) An offense under this section is a felony of the third degree.

(c) It is a defense to prosecution under this section that Section 101.051 or 101.052, as applicable, by its terms does not apply to the person charged. (V.T.I.C. Art. 1.14-1, Sec. 13.)

[Sections 101.107 to 101.150 reserved for expansion]

#### SUBCHAPTER D. CEASE AND DESIST ORDERS

**Sec. 101.151. POWERS OF COMMISSIONER; NOTICE OF HEARING.** (a) The commissioner may set a hearing on whether to issue a cease and desist order under Section 101.153 if the commissioner has reason to believe that:

(1) an insurer or other person has violated or is threatening to violate this chapter or a rule adopted under this chapter; or

(2) an insurer or other person acting in violation of this chapter has engaged in or is threatening to engage in an unfair act.

(b) The commissioner shall serve on the insurer or other person a statement of charges and a notice of hearing in the form provided by Section 2001.052, Government Code, and applicable rules of the commissioner. (V.T.I.C. Art. 1.14-1, Sec. 3A(a) (part).)

**Sec. 101.152. HEARING.** (a) Except as agreed by the parties with prior written approval of the commissioner, a hearing under this subchapter must be held not earlier than the fifth day or later than the 30th day after the date of service of the statement and notice required under Section 101.151.

(b) The hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code, and the commissioner's rules. (V.T.I.C. Art. 1.14-1, Secs. 3A(a) (part), (b).)

**Sec. 101.153. CEASE AND DESIST ORDER.** After a hearing held under this subchapter, the commissioner may issue against the insurer or other person charged with a violation an order that requires that the insurer or other person immediately cease and desist from the violation. (V.T.I.C. Art. 1.14-1, Sec. 3A(c).)

**Sec. 101.154. ENFORCEMENT; REFERRAL TO ATTORNEY GENERAL.** The commissioner may refer the matter to the attorney general for enforcement if the commissioner has reason to believe that an insurer or other person has:

(1) violated a cease and desist order issued under this subchapter; or

(2) failed to pay an assessed penalty. (V.T.I.C. Art. 1.14-1, Sec. 3A(f).)

**Sec. 101.155. EFFECT OF PRIOR PROCEEDINGS.** The commissioner and department may proceed under this chapter or any other applicable law without regard to prior proceedings. (V.T.I.C. Art. 1.14-1, Sec. 3A(h).)

**Sec. 101.156. RULES.** The commissioner may adopt reasonable rules necessary to implement this subchapter. (V.T.I.C. Art. 1.14-1, Sec. 3A(g).)

[Sections 101.157 to 101.200 reserved for expansion]

#### SUBCHAPTER E. INSURANCE CONTRACTS WITH UNAUTHORIZED INSURERS

**Sec. 101.201. VALIDITY OF INSURANCE CONTRACTS.** (a) An insurance contract effective in this state and entered into by an unauthorized insurer is unenforceable by the insurer. A person who in any manner assisted directly or indirectly in the procurement of the contract is liable to the insured for the full amount of a claim or loss under the terms of the contract if the unauthorized insurer fails to pay the claim or loss.

(b) *This section does not apply to:*

(1) *insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined by Article 1.14-2:*

(A) *that is reported; and*

(B) *on which premium tax is paid in accordance with Article 1.14-2; or*

(2) *an independently procured contract of insurance, as described in Section 101.053(b)(4):*

(A) *that is reported; and*

(B) *on which premium tax is paid in accordance with this chapter. (V.T.I.C. Art. 1.14-1, Sec. 8.)*

**Sec. 101.202. ATTORNEY'S FEES.** (a) *In an action against an unauthorized insurer or other unauthorized person on a contract of insurance issued or delivered in this state to a resident of this state or to a corporation authorized to do business in this state, the court may award to the plaintiff a reasonable attorney's fee if:*

(1) *the insurer or other person failed, for at least 30 days after a demand made before the commencement of the action, to make payment under the contract's terms; and*

(2) *the failure to make the payment was vexatious and without reasonable cause.*

(b) *An insurer's or other person's failure to defend an action described by Subsection (a) is prima facie evidence that the failure to make payment was vexatious and without reasonable cause. (V.T.I.C. Art. 1.14-1, Sec. 7.)*

**Sec. 101.203. INVESTIGATION AND DISCLOSURE.** (a) *If the commissioner has reason to believe that insurance has been effectuated by or for a person in this state with an unauthorized insurer, the commissioner shall in writing order the person to:*

(1) *produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers; and*

(2) *disclose to the commissioner:*

(A) *the amount of insurance;*

(B) *the name and address of each insurer;*

(C) *the gross amount of premiums paid or to be paid; and*

(D) *the name and address of each person assisting in the solicitation, negotiation, or effectuation of the insurance.*

(b) *A person who fails to comply with a written order under Subsection (a) before the 31st day after the date of the order or who wilfully makes a disclosure that is untrue, deceptive, or misleading shall forfeit:*

(1) *\$50; and*

(2) *an additional \$50 for each day the person continues to fail to comply after expiration of the 30-day period.*

(c) *This section does not apply to:*

(1) *a transaction in this state that:*

(A) *involves a policy that:*

(i) *is lawfully solicited, negotiated, written, and delivered outside this state; and*

(ii) *covers, at the time the policy is issued, only subjects of insurance that are not resident, located, or expressly to be performed in this state; and*

(B) *takes place after the policy is issued; or*

(2) *surplus lines insurance procured through eligible surplus lines carriers as defined by Article 1.14-2. (V.T.I.C. Art. 1.14-1, Sec. 9.)*

*[Sections 101.204 to 101.250 reserved for expansion]*

## SUBCHAPTER F. TAXES

**Sec. 101.251. PREMIUM RECEIPTS TAX.** (a) In this section, "premium" includes any consideration for insurance, including:

- (1) a premium;
- (2) a membership fee;
- (3) an assessment; or
- (4) dues.

(b) Except as provided by Subsection (j), an unauthorized insurer shall pay to the comptroller, on a form prescribed by the comptroller, a premium receipts tax of 4.85 percent of gross premiums charged for insurance on a subject resident, located, or to be performed in this state.

(c) If a policy covers risks or exposures only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state.

(d) In determining the amount of taxable premiums under Subsection (c), all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state or that are for a policy negotiated in this state are considered to be written on property or risks located or resident in this state.

(e) Insurance on a subject resident, located, or to be performed in this state is considered to be insurance procured, continued, or renewed in this state regardless of the location from which:

- (1) the application is made;
- (2) the negotiations are conducted; or
- (3) the premiums are remitted.

(f) Premiums on risks or exposures that are properly allocated to federal waters or international waters or under the jurisdiction of a foreign government are not taxable by this state.

(g) The unauthorized insurer shall pay the premium receipts tax required by this section before:

- (1) March 1 following the calendar year in which the insurance was effectuated, continued, or renewed; or
- (2) another date specified by the comptroller.

(h) The tax imposed by this section is in lieu of all other insurance taxes.

(i) On default of an unauthorized insurer in the payment of the tax, the insured shall pay the tax.

(j) This section does not apply to premiums on:

(1) insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined by Article 1.14-2 on which premium tax is paid in accordance with Article 1.14-2; or

(2) an independently procured contract of insurance on which premium tax is paid in accordance with this chapter. (V.T.I.C. Art. 1.14-1, Secs. 11(a) (part), (b).)

**Sec. 101.252. INDEPENDENTLY PROCURED INSURANCE TAX.** (a) Except as provided by Subsection (f), an insured who procures insurance in accordance with Section 101.053(b)(4), or another person designated by the insured, shall:

- (1) file a report with the comptroller; and
- (2) pay an independently procured insurance tax of 4.85 percent.

(b) If a policy covers risks or exposures only partially located in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state.

(c) *An insured who fails to withhold from the premium the amount of tax imposed under this section is liable for the amount of the tax and shall pay the tax to the comptroller within the time described by Subsection (d).*

(d) *Except as provided by Section 101.253, the report and tax are due on or before:*

(1) *March 1 following the calendar year in which the insurance was procured, continued, or renewed; or*

(2) *another date specified by the comptroller.*

(e) *This section does not abrogate or modify any other provision of this chapter.*

(f) *This section does not apply to premiums for individual life or individual disability insurance. (V.T.I.C. Art. 1.14-1, Secs. 12(a), (b), (c), (d) (part), (e).)*

**Sec. 101.253. FILING REQUIREMENTS FOR CORPORATIONS.** *The amount of tax due and payable under Section 101.252 with respect to a corporation that files a franchise tax return shall be reported directly to the comptroller and is due:*

(1) *at the time the franchise tax report is due; or*

(2) *on another date specified by the comptroller. (V.T.I.C. Art. 1.14-1, Sec. 12A (part).)*

*[Sections 101.254 to 101.300 reserved for expansion]*

#### **SUBCHAPTER G. REPORTING OF UNAUTHORIZED INSURANCE**

**Sec. 101.301. REPORTING REQUIRED.** (a) *A person investigating or adjusting a loss or claim on a subject of insurance in this state shall immediately report to the department an insurance policy or contract that has been entered into by an insurer that is not authorized to transact the insurance in this state.*

(b) *This section does not apply to:*

(1) *a transaction described by Section 101.053(b)(4); or*

(2) *surplus lines insurance procured through eligible surplus lines carriers as defined by Article 1.14-2. (V.T.I.C. Art. 1.14-1, Sec. 10.)*

### **CHAPTER 102. CHARITABLE GIFT ANNUITIES**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

##### **Sec. 102.001. DEFINITIONS**

##### **Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY**

*[Sections 102.003 to 102.050 reserved for expansion]*

#### **SUBCHAPTER B. ISSUANCE OF CHARITABLE GIFT ANNUITY**

##### **Sec. 102.051. NOT INSURANCE; EFFECT OF CERTAIN LAWS**

*[Sections 102.052 to 102.100 reserved for expansion]*

#### **SUBCHAPTER C. NOTICE**

##### **Sec. 102.101. NOTICE TO DONOR**

##### **Sec. 102.102. NOTICE TO DEPARTMENT**

##### **Sec. 102.103. EFFECT ON ANNUITY OF FAILURE TO PROVIDE NOTICE**

##### **Sec. 102.104. ENFORCEMENT OF NOTICE REQUIREMENTS**

### **CHAPTER 102. CHARITABLE GIFT ANNUITIES**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 102.001. DEFINITIONS.** *In this chapter:*

(1) "Charitable gift annuity" means an annuity:

- (A) that is payable over the lives of one or two individuals;
- (B) that is made in return for the transfer of cash or other property to a charitable organization; and
- (C) the actuarial value of which is less than the value of the cash or other property transferred, with the difference in those values being a charitable deduction for federal tax purposes.

(2) "Charitable organization" means an entity described by:

- (A) Section 501(c)(3), Internal Revenue Code of 1986; or
- (B) Section 170(c), Internal Revenue Code of 1986. (V.T.I.C. Art. 1.14-1A, Secs. 1(1), (2).)

**Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY.** A charitable gift annuity is a qualified charitable gift annuity for purposes of this chapter if it was issued before September 1, 1995, or if it is:

- (1) described by Section 501(m)(5), Internal Revenue Code of 1986; and
- (2) issued by a charitable organization that on the date of the annuity agreement:
  - (A) has, exclusive of the assets funding the annuity agreement, a minimum of \$100,000 in unrestricted cash, cash equivalents, or publicly traded securities; and
  - (B) has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years. (V.T.I.C. Art. 1.14-1A, Secs. 1(3), 2(b) (part).)

[Sections 102.003 to 102.050 reserved for expansion]

#### SUBCHAPTER B. ISSUANCE OF CHARITABLE GIFT ANNUITY

**Sec. 102.051. NOT INSURANCE; EFFECT OF CERTAIN LAWS.** The issuance of a qualified charitable gift annuity:

- (1) does not constitute engaging in the business of insurance in this state;
- (2) does not violate Section 15.05 or 17.46, Business & Commerce Code; and
- (3) is not an unconscionable action or course of action for purposes of Section 17.50(a)(3), Business & Commerce Code. (V.T.I.C. Art. 1.14-1A, Secs. 2(a), (b) (part); 6.)

[Sections 102.052 to 102.100 reserved for expansion]

#### SUBCHAPTER C. NOTICE

**Sec. 102.101. NOTICE TO DONOR.** (a) A charitable organization that issues a qualified charitable gift annuity shall give to the donor, at the time an agreement for a qualified charitable gift annuity is entered into, written notice that the annuity is not:

- (1) insurance under the laws of this state;
- (2) subject to regulation by the department; and
- (3) protected by a guaranty association affiliated with the department.

(b) The notice must be in a separate paragraph of the annuity agreement in a print size at least as large as the print size generally used in the agreement. (V.T.I.C. Art. 1.14-1A, Sec. 3.)

**Sec. 102.102. NOTICE TO DEPARTMENT.** (a) A charitable organization that issues qualified charitable gift annuities shall notify the department's annuities division in writing not later than the date on which the organization enters into the organization's first qualified charitable gift annuity agreement.

(b) The notice required by this section must:

- (1) be signed by an officer or director of the organization;



(2) identify the organization; and

(3) certify that:

(A) the organization is a charitable organization; and

(B) the annuities issued by the organization are qualified charitable gift annuities.

(c) The charitable organization may not be required to submit additional information except to determine appropriate penalties under Section 102.104. (V.T.I.C. Art. 1.14-1A, Sec. 4.)

**Sec. 102.103. EFFECT ON ANNUITY OF FAILURE TO PROVIDE NOTICE.** A charitable gift annuity that otherwise meets the requirements of Section 102.002 is a qualified charitable gift annuity without regard to whether the charitable organization that issues the annuity complies with the notice requirements of this subchapter. (V.T.I.C. Art. 1.14-1A, Sec. 5 (part).)

**Sec. 102.104. ENFORCEMENT OF NOTICE REQUIREMENTS.** (a) The commissioner may enforce the notice requirements of this subchapter by sending by certified mail, return receipt requested, a letter demanding that the charitable organization comply with the notice requirements.

(b) The department may fine the charitable organization in an amount not to exceed \$1,000 for each qualified charitable gift annuity agreement issued by the organization until the time the organization complies with this subchapter. (V.T.I.C. Art. 1.14-1A, Sec. 5 (part).)

**SECTION 2. CONFORMING AMENDMENT.** Chapters 1-27, Insurance Code, are designated as Title 1, Insurance Code, and a title heading is added to read as follows:

#### TITLE 1. THE INSURANCE CODE OF 1951

**SECTION 3. CONFORMING AMENDMENT.** Subsection (a), Article 1.04D, Insurance Code, is amended to read as follows:

(a) Except as otherwise expressly provided for in this code or another insurance law of this state, the comptroller shall administer, enforce, and carry out the provisions of this code and other insurance laws of this state that relate ~~[duties of the department and commissioner relative]~~ to the collection, reporting, and administration of taxes and certain fees and assessments imposed under this code or another insurance law of this state ~~[are transferred to the comptroller effective September 1, 1993]~~, as specifically provided in this code.

**SECTION 4. CONFORMING AMENDMENT.** Article 1.10, Insurance Code, is amended to read as follows:

**Art. 1.10. CERTAIN DUTIES OF THE DEPARTMENT.** In addition to the other duties required of the Department, the Department shall perform duties as follows:

~~[1. Shall Execute the Laws. See that all laws respecting insurance and insurance companies are faithfully executed.]~~

2. File Articles of Incorporation and Other Papers. File and preserve in its office all acts or articles of incorporation of insurance companies and all other papers required by law to be deposited with the Department and, upon application of any party interested therein, furnish certified copies thereof upon payment of the fees prescribed by law.

3. Shall Calculate Reserve. For every company transacting any kind of insurance business in this State, for which no basis is prescribed by law, the Department shall calculate the reinsurance reserve upon the same basis prescribed in Article 6.01 of this code as to companies transacting fire insurance business.

4. To Calculate Re-insurance Reserve. On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the Department shall have calculated in the Department the re-insurance reserve for all unexpired risks of all insurance companies organized under the laws of this state, or transacting business in this state, transacting any kind of insurance other than life, fire, marine, inland, lightning or tornado insurance, which calculation shall be in accordance with the provisions of Paragraph 3 hereof.

5. When a Company's Surplus is Impaired. No impairment of the capital stock of a stock company shall be permitted. No impairment of the surplus of a stock company, or of the minimum required aggregate surplus of a mutual, Lloyd's, or reciprocal insurer, shall be permitted in excess of that provided by this section. Having charged against a company other than a life insurance company, the reinsurance reserve, as prescribed by the laws of this State, and adding thereto all other debts and claims against the company, the Commissioner shall, (i) if it is determined that the surplus required by Article 2.02 or 2.20 of this code of a stock company doing the kind or kinds of insurance business set out in its Certificate of Authority is impaired to the extent of more than fifty (50%) per cent of the required surplus for a capital stock insurance company, or is less than the minimum level of surplus required by Commissioner promulgated risk-based capital and surplus regulations, or (ii) if it is determined that the required aggregate surplus of a reciprocal or mutual company, or the required aggregate of guaranty fund and surplus of a Lloyd's company, other than a life insurance company, doing the kind or kinds of insurance business set out in its Certificate of Authority is impaired to the extent of more than twenty-five per cent (25%) of the required aggregate surplus, or is less than the minimum level of surplus required by Commissioner promulgated risk-based capital and surplus regulations, the Commissioner shall order the company to remedy the impairment of surplus to acceptable levels specified by the Commissioner or to cease to do business within this State. The Commissioner shall thereupon immediately institute such proceedings as may be necessary to determine what further actions shall be taken in the case.

6. Shall Publish Results of Investigation. The Department shall publish the result of an examination of the affairs of any company whenever the Commissioner deems it for the interest of the public.

~~[7. May Order Sanctions. (a) After notice and opportunity for a hearing, the Commissioner may cancel or revoke any permit, license, certificate of authority, certificate of registration, or other authorization issued or existing under the Commissioner's authority or the authorization of this Code if the holder or possessor of same is found to be in violation of, or to have failed to comply with, a specific provision of the Code or any duly promulgated rule or regulation of the Commissioner. The Commissioner may also order one or more of the following sanctions:~~

~~[(1) Suspend such authorization for a time certain, not to exceed one year;~~

~~[(2) Order the holder or possessor of such authorization to cease and desist from the specified activity determined to be in violation of specific provisions of this Code or rules and regulations of the Commissioner or from failure to comply with such provisions of this Code or such rules and regulations;~~

~~[(3) Direct the holder or possessor of such authorization to pay an administrative penalty in accordance with Article 1.10E of this code; or~~

~~[(4) Direct the holder or possessor of such authorization to make complete restitution to all Texas residents, Texas insureds, and entities operating in Texas harmed by the violation or failure to comply,~~

~~[(b) Restitution under Subdivision (4) of Subsection (a) must be made in the form and amount and within the period determined by the Commissioner.~~

~~[(c) If it is found after hearing that any holder or possessor has failed to comply with an order issued pursuant to Subsection (a), the Commissioner shall, unless its order is lawfully stayed, cancel all authorizations of such holder or possessor.~~

~~[(d) The Commissioner may informally dispose of any matter specified in this section by consent order, agreed settlement, stipulations, or default. An informal disposition or consent order may include a provision under which the holder or possessor agrees to a sanction under this section with the express reservation that:~~

~~[(1) the holder or possessor is not admitting any violation of this code or of a rule or regulation; and~~

~~[(2) the existence of a violation is in dispute.~~

~~[(e) The Commissioner shall give notice of any action taken pursuant to this section to the Insurance Commissioner or other similar officer of every state.~~

~~[(f) The authority vested in the Commissioner in this Article shall be in addition to and not in lieu of any other authority to enforce or cause to be enforced any sanctions, penalties, fines, forfeitures, denials, suspensions, or revocations otherwise authorized by law, and shall be applicable to every form of authorization to any person or entity holding or possessing the same.~~

~~[(g) This section applies to all companies regulated by the Commissioner, including but not limited to domestic and foreign, stock and mutual life, health, and accident insurance companies; domestic and foreign, stock and mutual, fire and casualty insurance companies; Mexican casualty companies; domestic and foreign Lloyd's plan insurers; domestic and foreign reciprocal or interinsurance exchanges; domestic and foreign fraternal benefit societies; domestic and foreign title insurance companies; attorney's title insurance companies; stipulated premium insurance companies; nonprofit legal service corporations; health maintenance organizations; statewide mutual assessment companies; local mutual aid associations; local mutual burial associations; exempt associations under Article 14.17 of this Code; nonprofit hospital, medical, or dental service corporations including but not limited to companies subject to Chapter 20 of this Code; county mutual insurance companies; and farm mutual insurance companies. Also, this section applies to all agents of those companies and generally to all other individuals, corporations, associations, partnerships, and other natural or artificial persons engaged in the business of insurance or that hold a permit, certificate, registration, license, or other authority under this Code or that are regulated by the Commissioner.~~

~~[8. Report to Attorney General. The Department shall report promptly and in detail to the Attorney General any violation of law relative to insurance companies or the business of insurance.~~

~~[9. Shall Furnish Blanks. The Department shall furnish to the companies required to report to the Department the necessary blank forms for the statements required.~~

~~[10. Shall Keep Records. The Department shall preserve in a permanent form a full record of the Department's proceedings and a concise statement of the condition of each company or agency visited or examined.~~

~~[11. Give Certified Copies. At the request of any person, and on the payment of the legal fee, the Department shall give certified copies of any record or papers in its office, when the Commissioner deems it not prejudicial to public interest and shall give such other certificates as are provided for by law. The fees collected by the Department under this section shall be deposited in the State Treasury to the credit of the Texas Department of Insurance operating fund.~~

~~[12. Report to Governor and Legislature. The Department shall file annually with the Governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed by the Department during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act. The report shall also contain the Commissioner's official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of the Department.~~

~~[13. Send Copies of Reports To. The Department shall send a copy of the annual report to the Insurance Commissioner or other similar officer of every state and, on request, shall send a copy to each company doing business in Texas.~~

~~[14. Report Laws to Other States. On request, the Department shall communicate to the Insurance Commissioner or other similar officer of any other state, in which the substantial provisions of the law of this State relative to insurance have been, or shall be, enacted, any facts which by law it is his duty to ascertain respecting the companies of this State doing business within such other state.]~~

15. See That No Company Does Business. The Commissioner shall see that no company is permitted to transact the business of life insurance in this State whose charter authorizes it to do a fire, marine, lightning, tornado, or inland insurance business, and that no company authorized to do a life insurance business in this State be permitted to take fire, marine or inland risks.

16. Admit Mutual Companies. The Commissioner shall admit into this State mutual insurance companies engaged in cyclone, tornado, hail and storm insurance which are organized under the laws of other states and which have Two Million (\$2,000,000.00) Dollars assets in excess of liabilities.

17. Voluntary Deposits. (a) In the event any insurance company organized and doing business under the provisions of this Code shall be required by any other state, country or province as a requirement for permission to do an insurance business therein to make or maintain a deposit with an officer of any state, country, or province, such company, at its discretion, may voluntarily deposit with the Comptroller such securities as may be approved by the Commissioner of Insurance to be of the type and character authorized by law to be legal investments for such company, or cash, in any amount sufficient to enable it to meet such requirements. The Comptroller is hereby authorized and directed to receive such deposit and hold it exclusively for the protection of all policyholders or creditors of the company wherever they may be located, or for the protection of the policyholders or creditors of a particular state, country or province, as may be designated by such company at the time of making such deposit. The company may, at its option, withdraw such deposit or any part thereof, first having deposited with the Comptroller, in lieu thereof, other securities of like class and of equal amount and value to those withdrawn, which withdrawal and substitution must be approved by the Commissioner of Insurance. The proper officer of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Comptroller and the Commissioner of Insurance. Any deposit so made for the protection of policyholders or creditors of a particular state, country or province shall not be withdrawn, except by substitution as provided above, by the company, except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding or potential policyholder liabilities or obligations in such other state, country or province requiring such deposit, and upon the filing of such evidence the company may withdraw such deposit at any time upon the approval of the Commissioner of Insurance. Any deposit so made for the protection of all policyholders or creditors wherever they may be located shall not be withdrawn, except by substitution as provided above, by the company except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company does not have any unsecured liabilities outstanding or potential policy liabilities or obligations anywhere, and upon filing such evidence the company may withdraw such deposit upon the approval of the Commissioner of Insurance. For the purpose of state, county and municipal taxation, the situs of any securities deposited with the Comptroller hereunder shall be in the city and county where the principal business office of such company is fixed by its charter.

(b) Any voluntary deposit held by the Comptroller or the Department heretofore made by any insurance company in this State, and which deposit was made for the purpose of gaining admission to another state, may be considered, at the option of such company, to be hereinafter held under the provisions of this Act.

(c) When two or more companies merge or consolidate or enter a total reinsurance contract by which the ceding company is dissolved and its assets acquired and liabilities assumed by the surviving company, and the companies have on deposit with the Comptroller two or more deposits made for identical purposes under this section or Article 4739, Revised Statutes, as amended, and now repealed, all such deposits, except the deposit of greatest amount and value, may be withdrawn by the new surviving or reinsuring company, upon proper showing of duplication of such deposits and that the company is the owner thereof.

(d) Any company which has made a deposit or deposits under this section or Article 4739, Revised Statutes, as amended and now repealed, shall be entitled to a return of such deposits upon proper application therefor and a showing before the Commissioner that such deposit or deposits are no longer required under the laws of any state, country or province in which such company sought or gained admission to do business upon the strength of a certificate of such deposit.

(e) Upon being furnished a certified copy of the Commissioner's order issued under Subsection (c) or (d) above, the Comptroller shall release, transfer and deliver such deposit or deposits to the owner as directed in said order.

18. Complaint File. The Department shall keep an information file about each complaint filed with the Department concerning an activity that is regulated by the Department or Commissioner.

19. Notice of Complaint Status. If a written complaint is filed with the Department, the Department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

20. Electronic Transfer of Funds. The Commissioner shall adopt rules for the electronic transfer of any taxes, fees, guarantee funds, or other money owed to or held for the benefit of the state and for which the Department has the responsibility to administer under this code or another insurance law of this state. The Commissioner shall require the electronic transfer of any amounts held or owed in an amount exceeding \$500,000.

SECTION 5. REPEALER. Articles 1.01A, 1.02, 1.03A, 1.03B, 1.04, 1.04C, 1.06, 1.06A, 1.06AA, 1.06B, 1.06C, 1.07, 1.09, 1.09-2, 1.09-3, 1.09-5, 1.10A, 1.10B, 1.10E, 1.11A, 1.14-1, 1.14-1A, 1.19-1, 1.23, 1.24, 1.24B, 1.24C, 1.24D, 1.25, 1.25A, 1.27, 1.30, 1.33, 1.33A, 1.33B, 1.33C, 1.35C, 1.40, 1.41, 3.90, 5.121, 21.20-1, 21.30, 21.51, 21.69, 21.79B, and 21.79C, Insurance Code, are repealed.

SECTION 6. LEGISLATIVE INTENT. This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a recodification only, and no substantive change in law is intended by this Act.

SECTION 7. EFFECTIVE DATE. This Act takes effect September 1, 1999.

SECTION 8. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 30, 1999: Yeas 30, Nays 0; the Senate concurred in House amendment on April 30, 1999, by a viva-voce vote; passed the House, with amendment, on April 23, 1999, by a non-record vote.

Approved May 17, 1999.

Effective September 1, 1999.

## CHAPTER 102

S.B. No. 1545

AN ACT

relating to burials in the State Cemetery.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subsection (e), Section 2165.256, Government Code, is amended to read as follows:

(e) The committee shall review proclamations under Subsection (d)(4) and resolutions under Subsection (d)(5). A person specified in a proclamation or resolution is eligible for burial in the State Cemetery only if the committee, following its review, finds that the person specified made a significant contribution to Texas history and only if, based on that finding, the committee approves the person's burial in the cemetery. The committee may by order authorize a burial under Subsection (d)(6) ~~only during a period in which the legislature is not convened in regular or special session and~~ only if the committee finds that the person made a significant contribution to Texas history.

SECTION 2. This Act takes effect September 1, 1999.